TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 564

MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1927

CERTIORARI GRANTED NOVEMBER 21, 1927

(33,016)

(33,016)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 564

MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO, PETITIONERS,

vs.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

INDEX

	Page
Record from supreme court of Philippine Islands	1
Caption	1
Complaint	2
Exhibit A—By-laws of the National Coal Company	15
Exhibit B—Minutes of meeting of the committee created by act No. 2705 for the purpose of voting the stock held by the government in the National Coal Company	22
Exhibit C—Minutes of stockholders' meeting of the National Coal Company	31
Order requiring defendants to demur or answer	52
Demurrer	53
Order setting cause	55
Joint motion for enlargement of time for oral argument	56
Minute entries	58

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1928

Page

Motions for an extension of time for filing brief and order thereon 59
Opinion, Malcolm, J. 62
Concurring opinion, Johnson, J. 114
Dissenting opinion, Avancena, C. J., and Villamor and Villa-Real, JJ. 178
Exception and motion for stay 203
Opposition to motion for stay 205
Order denying motion for stay 211
Decree 212
Clerk's certificate 214
Order allowing certiorari 215

THE UNITED STATES OF AMERICA

PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

G. R. No. 26979—Quo Warranto

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,
Plaintiff,

VERSUS

MILTON E. SPRINGER, DALMACIO COSTAS
and ANSELMO HILARIO,
Defendants.

(ORIGINAL JURISDICTION)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On the 7th day of December, 1926, the plaintiff, through its attorneys, filed in the office of the

clerk of the Supreme Court, the following complaint:

(CAPTION AND TITLE OMITTED)

Now comes the Government of the Philippine Islands, the plaintiff in the above-entitled cause and for its cause of action against the defendants herein avers:

I

The National Coal Company is a corporation organized and existing under and by virtue of the provisions of Act 2705 of the Philippine Legislature, as amended by Act 2822 thereof, and of the Corporation Law of the Philippine Islands.

II

Section 4 of said Act 2705, as amended by Act 2822, reads as follows:

> "The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for at least fifty-one per centum of said capital stock, and the remainder may be offered to the public. Ten per centum of the value of all stock subscribed shall be

paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

III

On November 10, 1926, the Governor-General of the Philippine Islands, by Executive Order Number 37, due notice of the contents of which was given to the President of the Senate and the Speaker of the House of Representatives of the Philippine Legislature, declared that on account of the invalidity of that part of the Act creating the voting committee or Board of Control, the Governor-General would thereafter exercise exclusively the duties and powers theretofore assumed by the Board of Control or voting committee hereinabove mentioned.

IV

The board of directors of the National Coal Company consists of five shareholders to be elected by the stockholders.

V

Pursuant to the provisions of the by-laws of the National Coal Company, the regular annual meeting of the shareholders thereof for the year 1926 should have been held in the City of Manila in the month of August, 1926, for the election of directors and the consideration of such other matters as might properly come before a regular annual meeting of shareholders, but no such meeting was held by reason of the non-attendance of a sufficient number of shareholders to constitute a quorum for the transaction of business.

VI

Thereafter, to-wit, on the 6th day of December, 1926, a special meeting of the shareholders of the said corporation was duly and legally called and held at its place of business in the City of Manila for the purpose of electing directors and transacting such other business as might properly come before the meeting, of which special meeting due and timely notice was given in the manner prescribed by the by-laws of said corporation, a copy of which by-laws is hereunto attached, marked Exhibit "A".

VII

At the time the said special meeting of shareholders took place, the total number of shares of the stock of the said corporation outstanding was 30.000, of which 29,809 shares were owned by the Government of the Philippine Islands, plaintiff herein, and registered in its name on the stock books of said corporation.

VIII

At the said special meeting of the stockholders of the National Coal Company the Governor-General of the Philippine Islands, exercising the voting power of the 29,809 shares of stock owned by and registered in the name of the Government of the Philippine Islands, by ballot in writing, cast votes for the election of five shareholders, duly qualified to be directors of said company, namely, Alberto Barretto, Romarico Agcaoili, Frank B. Ingersoli, H. L. Heath and Salvador Lagdameo as directors of the said corporation, to hold office as such until their successors should be duly elected and qualified, but did not vote for either of the defendants above named.

IX

Each of the persons named in the preceding paragraph, for whom the votes of the Governor-General were cast, was the registered owner in his own right of one share of the stock of the National Coal Company, except Salvador Lagdameo.

X

The said Salvador Lagdameo is the Acting Treasurer of the Philippine Islands, and at the time of the said election, but less than ten days prior thereto, had presented to the proper officers of the corporation for transfer stock certificates for five shares of the stock of the National Coal Company, duly endorsed by the registered private owners thereof as sold to the Insular Treasurer; and after the said meeting the said five shares were actually transferred to the Insular Treasurer, as such, and certificates therefor duly issued to him.

XI

Two private shareholders of the National Coal Company, the registered owners of two shares of the stock of the National Coal Company standing on its books in their names respectively were present

at the said meeting and by written ballot cast a total of the votes for each of the five persons named in paragraph seven hereof, for whom the votes cast by the Governor-General were given, as averred.

XII

Notwithstanding the fact that prior to the said special meeting of the National Coal Company they had been advised that the Governor-General intended to exercise solely and exclusively the voting power of the shares of stock of the said corporation owned by the Philippine Government, as stated in paragraph III above, the President of the Philippine Senate, the Hon. Manuel Quezon, and the Speaker of the House of Representatives, the Hon. Manuel Roxas, addressed a written communication to the Governor-General of the Philippine Islands, calling upon him to attend a meeting for the purpose of conferring with them with a view to determining by agreement for whom the votes pertaining to the stock of the Government of the Philippine Islands in the National Coal Company should be cast at the said special meeting, receipt of which notice the Governor-General acknowledged but de-

clined for the reasons stated in said Executive Order No. 37 to participate in such meeting.

XIII

Thereupon, the President of the Philippine Senate and the Speaker of the House of Representatives met at the time and place designated in the notice mentioned in the paragraph next preceding and undertook to take, on behalf of the committee mentioned in Section 4 of Act 2705, as amended, the action recorded in the minutes of their said meeting, a copy of which said minutes is hereunto attached for the information of the Court, marked Exhibit "B".

XIV

The President of the Philippine Senate and the Speaker of the House of Representatives of the Philippine Legislature were present at the said special meeting of the shareholders of the National Coal Company, and, notwithstanding the objection and protest of the Governor-General, insisted upon participating in the election of the directors of said corporation, asserting the right to do so jointly as the majority of the committee mentioned in Section 4 of Act 2705, as amended by Section 2 of Act 2822.

XV

Notwithstanding the objection and protest of the Governor-General that they had no legal right to vote the stock in said company owned by and registered in the name of the Government of the Philippine Islands, the President of the Senate and the Speaker of the House of Representatives participated in said meeting and deposited with the inspector of election at said meeting a paper writing which they pretended to be a written ballot for the election of directors of the said corporation, in which paper writing they undertook and attempted to vote the 29,809 shares of the Government of the Philippine Islands in the National Coal Company, which said alleged ballot so deposited by them is in words and figures as follows, to-wit:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926

This is to certify that at a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the Company on December 6, 1926, at 2:30 o'clock in the afternoon, it was resolved that the votes represented by the 29,809 shares held by the Government of the Philip-

pine Islands in the National Coal Company be voted for each of the following named persons as directors of the National Coal Company, to-wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

By virtue thereof the said Committee hereby votes all the said 29,809 shares held by the Government of the Philippine Islands in the National Coal Co. in favor of the following persons as directors of the National Coal Company, to-wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

(Sgd.) D. COSTAS,
Secretary
of meeting of committee
established by Section 4
of Act 2705, as amended.

COUNTERSIGNED:

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

XVI

The persons named in the alleged ballot set forth in the paragraph next preceding were at the time said special meeting was held, and are now, shareholders of record of the National Coal Company, in their own right.

XVII

There were present at the said special meeting, by person or by proxy, six private shareholders, the owners of record of fifteen of the shares of the National Coal Company, who cast their ballots for the election of the same persons named in the alleged ballot set forth in Paragraph XV hereof.

XVIII

Thereupon, upon the written report of his canvass of the ballots made by the inspector of election, the chairman of the said special meeting declared that Milton E. Springer, Dalmacio Costas, Anselmo Hilario and Frank B. Ingersoll had each received 29,821 of the votes cast at the said election, and that Alberto Barretto had received 29,822 of said votes, and that they and each of them were the directors elect of the National Coal Company.

XIX

Thereupon, the Governor-General protested the ruling of the chairman with respect to the declaration of the election of Milton E. Springer, Dalmacio Costas and Anselmo Hilario, and demanded that the chairman should declare the election of each and every one of the five persons for whom his ballot was cast; but the chairman refused to amend his decision in accordance with such demand, whereupon the Governor-General renewed his protest.

XX

A true copy of the minutes of the proceedings had at the said special meeting of the shareholders

of the National Coal Company is hereunto attached, marked Exhibit "C", and made a part hereof.

XXI

Thereafter, to-wit, the 6th day of December, 1926, the Chairman of the said shareholders' meeting called a meeting to be attended by the persons above named declared by him to have been elected to membership in the Board of Directors of the National Coal Company, at which meeting there were present the above named defendants who participated therein, claiming to have been duly elected as directors at said meeting; and the said defendants participated in the election of a president and secretary of said company, and in the exercise of the privileges and the performance of the duties of directors of the National Coal Company.

XXII

That each and everyone of the defendants above named has usurped, intruded into, and unlawfully exercised the office of director of the said National Coal Company, and does now and unless ousted therefrom will continue to usurp, intrude into, and unlawfully exercise such office, and to exclude

therefrom the rightful incumbents, to-wit: Salvador Lagdameo, H. L. Heath and Romarico Agcaoili, who, by virtue of their due election thereto, as herein averred, and their acceptance of such office, claim to be entitled and are entitled to the offices so usurped, intruded into, and unlawfully exercised by the said defendants.

WHEREFORE the plaintiff prays that judgment be rendered that the defendants herein, and each of them, to-wit, Milton E. Springer, Anselmo Hilario and Dalmacio Costas are not entitled to membership in the board of directors of the National Coal Company and that they be ousted and altogether excluded from said offices and perpetually enjoined from exercising any of the powers inherent therein, with costs.

Manila, P. I., December 7, 1926.

(Sgd.) DELFIN JARANILLA
Attorney-General of the
Philippine Islands.
Attorney for Plaintiff.

(Sgd.) F. C. FISHER,
(Sgd.) HUGH C. SMITH,
Special Counsels for Plaintiff.

EXHIBIT "A"

BY-LAWS OF
THE NATIONAL COAL COMPANY

ARTICLE I

Stockholders and Stockholders' Meetings

Sec. 1. The regular annual meeting of stockholders for the election of directors and for the transaction of such other business as may be proper shall be held at 3:00 p. m. on the second Monday of August of each year in the City of Manila at the principal office of the Company.

Sec. 2. Upon the request of the stockholders representing one-third of all the subscribed capital stock of the Company, or upon request of the Board of Directors, a special stockholders' meeting shall be promptly called by the President. The secretary shall give due notice to each stockholder as to the time and place of all special meetings, but failure of any stockholder to receive such notice shall not operate to invalidate any action taken at such meetings.

Sec. 3. The holder or holders of a majority of all the subscribed capital stock of the Company,

as shown by the records, shall constitute a quorum for the purpose of transacting business at stockholders' meetings, and in case any stockholder is unable to be present in person, he may be represented by proxy duly authorized in writing as follows:

> "I hereby appoint ..... my proxy to represent me in person at the stockholders' meeting of the National Coal Company to be held on ....., with full power to vote my stock and otherwise act for me in any matter which may come before said meeting.
>
> (Sgd.) ....."

If at any stockholders' meeting a quorum of the stock shall not be present, the meeting may be adjourned from time to time until a quorum shall be obtained.

Sec. 4. The business conducted at any special stockholders' meeting need not be confined to the particular purpose for which said meeting shall have been called, but may extend to any matter whatsoever within their jurisdiction, provided it is approved by a majority of the stockholders.

ARTICLE II

Directors and Directors' Meetings

Sec. 1. The members of the Board of Directors shall be elected at the annual stockholders' meeting and shall hold office until their successors are duly elected. In case of vacancy on the Board of Directors through resignation or otherwise, said vacancy shall be filled by appointment by the committee created by Section 4 of Act 2705.

Sec. 2. The Board of Directors shall hold regular meetings at 3:00 p. m. on the second Monday of each month, and may hold special meetings at any time subject to the call of the President, or of a majority of the Board. A majority of the members of the Board shall constitute a quorum for the purpose of transacting business. The minutes of all meetings shall be attested by the Secretary and certified by the President.

Sec. 3. The Board of Directors shall have such powers as may be provided by law, or as they may otherwise legally perform; but no contract for the leasing or purchase of coal bearing lands shall be entered into without the prior consent of a majority of the stockholders.

ARTICLE III

Officers and Employees

Sec. 1. The President shall be the chief executive of the Company. He shall preside at all directors' meetings and perform such other duties as may be provided in these By-Laws or as may otherwise pertain to his position.

Sec. 2. The Board of Directors shall elect from its own members a Vice-President, who shall act as President in the absence of the latter.

Sec. 3. The Treasurer shall receive all moneys of the Company and shall deposit same in the Philippine National Banl in the name of and to the credit of the Company, subject to withdrawal by checks signed by the Treasurer in his official capacity and countersigned by the President The Treasurer shall make such report to the Board of Directors at each monthly meeting as may be required by said Board.

Sec. 4. The Secretary shall keep the records of all stockholders and board meetings and shall preserve all documents, reports, and records pertaining to the Company. He shall perform such

other duties as may be required by the Board of Directors.

Sec. 5. There may be a general manager, a coal expert and such other officers and employees as the Board of Directors shall determine to be essential for the efficient conduct of the business of the Company.

ARTICLE IV

Executive Committee

Sec. 1. The Board of Directors may appoint from its own members an executive committee to act during the periods when the Board is not in session, and to exercise during such periods any or all powers which may lawfully be delegated to such committee by said Board.

ARTICLE V

Miscellaneous Provisions

Sec. 1. All stock certificates, when issued, shall bear the seal of the Company, and shall be signed by the President and attested by the Secretary. No stock shall be transferred on the books

of the Company without there having been first surrendered to the Secretary for cancellation the certificate constituting the basis for such transfer, properly endorsed by the holder of record as shown by the Company's stock-book. No transfer of stock shall be recorded during the ten days immediately preceding the annual stockholders' meeting.

Sec. 2. Dividends may be declared and paid out of the net profits of the business of the Company as and when the Board of Directors may elect.

Sec. 3. The fiscal year of the Company shall terminate on the last day of June of each year, and a full and complete audit of the books and accounts shall thereupon be made. The President shall present at the annual meeting of stockholders full reports of the conditions of the Company for the fiscal year immediately preceding said annual meeting.

Adopted by unanimous vote of all stock at the special stockholders' meeting held April 4, 1917.

(Sgd.) V. MADRIGAL,
President.

(Sgd.) D. COSTAS,
Secretary.

We, the undersigned, being a majority of the Board of Directors of the National Coal Company, do hereby certify that the foregoing is a true and exact copy of the By-Laws adopted by the stockholders at their meeting held April 4, 1917, and which are now on file in the principal office of the Corporation.

In witness whereof, we have hereunto set our hands this 8th day of August, 1917, and the Secretary of said Company has countersigned this certificate on this same date.

(Sgd.) V. MADRIGAL,
Director.

(Sgd.) C. H. FRENCH,
Director.

(Sgd.) MILTON E. SPRINGER,
Director.

(Sgd.) RAFAEL CORPUS,
Director.

(Sgd.) D. COSTAS,
Director.

COUNTERSIGNED:

(Sgd.) D. COSTAS,
Secretary.

EXHIBIT "B".

Minutes of Meeting of Committee Created by Act 2705 for the Purpose of Voting the Stock Held by the Government of the Philippine Islands in the National Coal Co. Held at the Offices of Said Company at 2:30 o'clock in the Afternoon of December 6, 1926, Pursuant to Written Request and Call Duly Made Upon His Excellency, the Governor-General of the Philippine Islands Dated November 29, 1926.

PRESENT: Hon. Manuel L. Quezon, President of the Senate. Hon. Manuel Roxas, Speaker, House of Representatives.

ABSENT: His Excellency, the Governor-General of the Philippine Islands.

Hon. Manuel L. Quezon, ranking member of the committee present at the meeting, called the meeting to order, and with the consent of the other member present, acted as Chairman thereof.

Upon invitation, Mr. Dalmacio Costas, Secretary of the National Coal Company, attended the meeting, and was unanimously designated as Sec-

retary of the meeting, and kept the minutes of the proceedings.

The Secretary reported that there were present at the meeting two of the three members of the committee, thus constituting the quorum necessary for the transaction of business.

The Secretary read to the meeting the request and call for the meeting, together with the affidavit regarding service thereof upon His Excellency, the Governor-General. On motion, duly made and approved, it was unanimously

> RESOLVED, That the said request and call as well as the affidavit concerning service thereof upon His Excellency, the Governor-General, be spread upon the minutes of this meeting.

Said request and call and affidavit as to service are as follows:

PHILIPPINE ISLANDS }
CITY OF MANILA } ss.

GUILLERMO CABRERA, being first duly sworn, deposes and says:

That he is the private secretary of Hon. Manuel L. Quezon, President of the Philippine Senate;

That on the 1st day of December, 1926, he caused to be delivered personally to the Office of His Excellency, the Governor-General of the Philippine Islands, Hon. Leonard Wood, in an enclosed envelope the request and call for a meeting of the committee created by Act 2705, for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Co., to be held on or before 2:30 p. m. of December 6, 1926, copy of which request and call is hereto attached and made a part hereof.

(Sgd.) GUILLERMO CABRERA.

Subscribed and sworn to before me, the undersigned notary public, this 6th day of December, 1926, affiant exhibiting to me his cedula certificate No. F-15195, issued at Manila, P. I., on Jan. 25, 1926.

(Sgd.) JESUS G. BARRERA,
Notary Public,
My Com. expires Dec. 31, 1926.

Doc. No. 99.
Page No. 53.
Book II.
Series 1926.

November 29, 1926.

SIR:

Having received notice that a meeting of the stockholders of the National Coal Company for the purpose of electing a new Board of Directors of the company will be held on December 6, 1926, at 3:00 p. m. at the office of said company, the undersigned, as members of the committee created by Act No. 2705 for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Company, hereby request that you call a meeting of the said committee to be held on or before 2:30 p. m. of December 6, 1926, for the purpose of deciding upon the manner in which the said stock shall be voted upon all matters that may properly come before the said meeting including the election of directors of the said company.

If you should not find it convenient to call such a meeting, you are hereby respectfully notified that the undersigned will hold a meeting of the said committee at 2:30 p. m. of December 6, 1926, at the of-

fice of the National Coal Company for the purpose above mentioned.

Very respectfully,

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.

HON. LEONARD WOOD,
Governor-General of the
Philippine Islands,
Manila.

The Chairman announced that, as indicated in said request and call, the purpose of the meeting is to decide upon the manner in which the stock held by the Government of the Philippine Islands in the National Coal Company shall be voted in the meeting of stockholders of the Company which has been called for December 6, 1926, at 3:00 o'clock in the afternoon, particularly with respect to the election of the directors of the Company.

On motion duly made and approved, it was UNANIMOUSLY

RESOLVED, that this Committee vote the stock held by the Government of the Philippine Islands in the National Coal Company for the purpose of designating Hon. Alberto Barretto, as chairman, and Mr. Dalmacio Costas, as secretary, of the meeting of stockholders, to be held at the office of the Company on December 6, 1926, at 3:00 o'clock in the afternoon, and at any adjournment or adjournments thereof.

On motion duly made and approved, it was UNANIMOUSLY

RESOLVED, that the votes represented by the stock held by the Government of the Philippine Islands in the National Coal Co. be cast for and in favor of the following persons as directors of said company:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL, and

FURTHER RESOLVED, that a ballot in the form hereinafter set forth be ordered made and signed by the Secretary of this

meeting and countersigned by the members of this committee present at this meeting, and filed with the Secretary of the Company at the meeting of the stockholders of said company to be held at 3:00 o'clock in the afternoon of December 6, 1926, or at any adjournment or adjournments thereof:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926

This is to certify that a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the company on December 6, 1926, at 2:30 o'clock in the afternoon it was resolved that the votes represented by the .....shares held by the Government of the Philippine Islands in the National Coal Co. be voted for each of the folowing named persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL,

By virtue whereof the said Committee hereby votes all the said ..... shares held by the

Government of the Philippine Islands in the National Coal Co. in favor of the following persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO,
MILTON E. SPRINGER,
DALMACIO COSTAS,
ANSELMO HILARIO,
FRANK B. INGERSOLL,

DALMACIO COSTAS,
Secretary
of meeting of committee established by Section 4 of Act 2705, as amended.

COUNTERSIGNED:

MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

On motion, duly made and approved, it was UNANIMOUSLY

RESOLVED, that the members of this committee present at this meeting

attend in person the meeting of stockholders of the National Coal Company, to be held on December 6, 1926, at 3:00 o'clock in the afternoon, in the offices of said Company at the China Bank Building, Manila, and any adjournment or adjournments thereof, and that a certified copy of the minutes of this meeting be presented to the President of the Company during said meeting.

There being no further business, on motion duly made and approved, the meeting adjourned.

(Sgd.) D. COSTAS,
Secretary of Meeting.

APPROVED:

(Sgd.) MANUEL L. QUEZON,
President of the
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member.

I HEREBY CERTIFY that the foregoing, consisting of eight (8) pages including the present page, constitute a true and

and exact copy of the minutes of the proceedings had at a meeting of the Committee created by Act No. 2705, as amended, for the purpose of voting the stock held by the Government of the Philippine Islands in the National Coal Company, duly called and held at the office of said Company, on December 6, 1926 at 2:30 o'clock in the afternoon.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

EXHIBIT "C".

MINUTES OF STOCKHOLDERS' MEETING OF THE NATIONAL COAL COMPANY

A meeting of the stockholders of the National Coal Company, a corporation created by Act 2705 of the Philippine Legislature, as amended by Act 2822 thereof, was held at the office of the corporation, China Bank Building, in the City of Manila, Philippine Islands, the 6th day of December, 1926, at 3:00 o'clock p. m.

The meeting was called to order by the President of the Company, the Hon. Alberto Barretto, who presided the meeting as Chairman thereof. The Chairman stated that no election of directors

was had at the time designated by the by-laws for the regular annual meeting, on account of the lack of a quorum; that the present meeting had been convened to elect directors pursuant to call, of which notice had been given, as required by the by-laws to the owners of all outstanding shares of the corporation, which call reads as follows:

"NATIONAL COAL COMPANY
CALL FOR A SPECIAL MEETING OF THE SHAREHOLDERS OF THE NATIONAL COAL COMPANY

The board of directors of the Company having designated Malacañang Palace in the call for the general meeting of shareholders of the Company for the election of directors, and other matters properly to be considered at general meetings as the place in which such meeting should be held; and this being contrary to the provisions of Article I, Section 1, of the by-laws of the Company which designates the principal office of the corporation as the place for that purpose; and the said call having being declared void, by order of the president, a special general meeting of the shareholders of this Company is hereby called to be held the 6th day of December, 1926, at 3:00 o'clock P. M. in the principal office of said Company, China

Bank Building, Calle Dasmariñas, corner of Juan Luna, fourth floor, rooms Nos. 409-410, for the purpose of electing the directors of the Company, and considering such other matters as may properly come before a general meeting; and to this end notice is hereby given to each and every one of the shareholders of Compañia Carbonera Nacional, also known as the National Coal Company.

Manila, P. I., November 20, 1926.

BY ORDER OF THE PRESIDENT

D. COSTAS
Secretary-Treasurer"

Mr. Dalmacio Costas, the Secretary of the Company, was present, and acted as the Secretary of the meeting.

The Secretary presented to the meeting a certified list of the stockholders of record of the Company as of November 26, 1926, the last day allowed by the By-Laws of the Company for any transfer of stock prior to this meeting. Said certified list is as follows:

NATIONAL COAL COMPANY
LIST OF STOCKHOLDERS OF RECORD
November 26, 1926.

	Cert. No.	*Number of Shares*
P. I. Government	(6)	15,300
P. I. Government	(25)	14,509
Purchased by P. I. Government not yet transferred on stock book of the company:		
Asia Banking Corporation..	(35)	100
P. J. Moore	(22)	20
Hilton Carson	(20)	10
Domingo M. Nieto	(16)	10
Felix M. Salas Rodriguez ..	(7)	10
Pedro Lozada	(21)	5
Eleuterio Matute	(1)	4
Manuel de la Rama Conlu ..	(8)	2
Victoria de la Victoria Conlu	(9)	2
Fortunata T. Salas Rod ...	(10)	2
Ramón de la Rama Conlu ..	(11)	1
Esteban Respal Conlu	(13)	1
María Conlu de la Rama ...	(14)	1
Gema Conlu	(27)	1
Galicano Apacible	(29)	1
Rosalia Enage	(36)	1
Pablo B. Herrera	(18)	1

Individual Stockholders:

Anselmo Hilario	(3)	10
Alberto Barretto	(39)	1
H. L. Heath	(41)	1
D. Costas	(2)	1
Romarico Agcaoili	(40)	1
Frank B. Ingersoll	(42)	1
Vicente Madrigal	(19)	1
Milton E. Springer	(5)	1
Laureano Mañalac	(28)	1
E. J. Westerhouse	(31)	1
TOTAL		30,000

The Secretary informed the meeting that the shares of stock represented by certificates numbered 1, 7, 8, 9, 10, 11, 13, 14, 16, 18, 20, 21, 22, 27, 35 and 36, have all been acquired by the Government of the Philippine Islands according to certification made by the Insular Treasurer, and that all said certificates of stock have been endorsed in favor of the Government of the Philippine Islands, with the exception of certificates numbered 1 and 18 which are endorsed in favor of

the Insular Treasurer and certificate numbered 29 which is endorsed in favor of the National Coal Company.

After reading the roll, the Secretary reported that the following stockholders were present in person:

Alberto Barretto	1
Frank B. Ingersoll	1
Dalmacio Costas	1
Romarico Agcaoili	1

and that the following private stockholders were represented by proxy:

Stockholder	*Proxy*	*No. of Shares*
Anselmo Hilario	Hon. Manuel L. Quezon	10
H. L. Heath	Hon. F. C. Fisher	1
Milton E. Springer	Hon. James Ross	1
Laureano Mañalac	Hon. José Abad Santos	1

Hon. Manuel L. Quezon, President of the Senate, and Hon. Manuel Roxas, Speaker, House of Representatives, presented to the President of the Company a certified copy of the minutes of the meeting of the committee created by Act No. 2705, as amended, for the purpose of voting the stock

held by the Government of the Philippine Islands in the National Coal Company, duly called and held at the office of said Company on December 6, 1926, at 2:30 o'clock in the afternoon, and in pursuance of a resolution duly approved by said committee as set forth in said minutes, informed the chair that they represented the stock held by the Government of the Philippine Islands at this meeting for the purpose of voting the same in accordance with the resolutions contained in said minutes.

His Excellency, Leonard Wood, the Governor-General, acting through his proxy, Hon. F. C. Fisher, stated that in his opinion and in the opinion of the Attorney-General of the United States, and the Judge Advocate General of the Army of the United States, the provisions of Section 4 of Act 2705, as amended, of the Philippine Legislature, is void insofar as it designates the President of the Senate and the Speaker of the House of Representatives as members of a committee to vote the stock of the National Coal Company, created by said Act 2705, owned by the Government of the Philippine Islands. He further stated that he objected to the presence at this meeting of the President of the Se-

nate, the Honorable Manuel L. Quezon, and the Speaker of the House of Representatives, the Honorable Manuel Roxas, in their asserted and pretended capacity (as asserted and claimed by them in their letter to the Governor-General dated November 16th, 1926, and as asserted and claimed at this meeting, or otherwise claimed by them) as representatives of the Government of the Philippine Islands in any wise or to any extent in connection with voting or representing the stock in said National Coal Company owned by the Philippine Government, for the election of directors of said Company or otherwise, and that he protests their right to participate in this meeting, as they have announced they will do, and protests their right to vote for the election of directors or for any other purpose, the shares of stock of the Government of the Philippine Islands, and protests their right in any wise to represent said stock in this meeting.

The Governor-General through his said proxy, then asserted in himself as Governor-General and as the successor in that office to the Governor-General who subscribed for said stock on behalf of the Government of the Philippine Islands under the

provisions of Act number 2705 of the Philippine Legislature, the right and authority to represent said stock and to cast the vote of said stock for the election of directors of said Company and for all other purposes.

The Honorable Manuel L. Quezon, President of the Philippine Senate, and the Honorable Manuel Roxas, Speaker of the House of Representatives of the Philippine Legislature, protested all of the aforesaid claims of the Governor-General, and asserted the right to vote the stock held by the Government of the Philippine Islands at this meeting, by virtue of the provisions of Act No. 2705, as amended, and the resolution duly adopted by the committee created by the said Act for the purpose of voting the said stock, which assertion of right they stated to be made upon the following grounds, *inter alia*:

a) That Section 4 of Act 2705, as amended by Section 2 of Act 2822 of the Philippine Legislature, provides, *inter alia*, that the voting power of all stock in the National Coal Company owned by the Government of the Philippine Islands shall be vested exclusively in a committee

consisting of the Governor-General, the President of the Senate and the Speaker of the House of Representatives;

b) That Act No. 2705, as amended, being the corporate charter of this Company, its provisions are absolutely binding upon this Company and all acts of the Company must be in strict accordance therewith;

c) That Act No. 2705, as amended, is a law duly enacted by the Philippine Legislature, and its provisions must be followed unless and until pronounced null and void by a Court of competent jurisdiction;

d) That the Governor-General has no authority by Executive Order to declare null and void any law duly passed by the Philippine Legislature, approved by his predecessor in office, reported to the United States Congress and by that body not disapproved in any way, shape, or form whatsoever, and for many years enforced and acted upon by the present Governor-General and his predecessors in office; and that therefore the attempted action on the part of the present Governor-General by Executive Order No. 37, to declare Section 4 of Act No. 2705, as amended, null and void, is absolutely void and of no effect; and

e) That the committee created by Act No. 2705, as amended, for the purpose of voting the stock held by the Government of the Philippine Islands, is a legal body, and the resolutions duly passed by said committee at a meeting duly called and convened, are binding upon this Company.

After considering the contentions of the Governor-General on the one hand, and those of the Hon. Manuel L. Quezon, as President of the Senate and Hon. Manuel Roxas, as Speaker of the House of Representatives, on the other, the Chairman of the meeting stated that, with due respect to the claims of His Excellency, the Governor-General, in view of the express provisions of Act No. 2705, as amended, which is the corporate charter to which the National Coal Company owes its very existence, determining the manner and by whom the stock held by the Government of the Philippine Islands should be voted, he could not recognize any other authority as representing the said stock but the committee created by said Act, and that, therefore, he regretted his inability to recognize His Excellency, Leonard Wood, in his sole capacity as Governor-General of the Philippine Is-

lands, as lawfully representing the stock of the Government of the Philippine Islands. On the other hand, having before him the record of the proceedings of the committee created by Act No. 2705, as amended, for the purpose of exercising the voting powers of the stock held by the Government of the Philippine Islands, and finding the contention of the Hon. Manuel L. Quezon and Hon. Manuel Roxas, in accordance with the action of said committee, the chair decided to recognize, as it did thereby recognize, the right of the said Hon. Manuel L. Quezon, as President of the Senate, and Hon. Manuel Roxas, as Speaker of the House of Representatives, both as members of the committee created by Act No. 2705, as amended, to represent and vote all the stock held by the Government of the Philippine Islands at this meeting; to which ruling the Governor-General, through his proxy, the Hon. F. C. Fisher, made known his protest and demanded that it be entered of record on the minutes.

In view of the decision of the chair, the Secretary announced that of the 30,000 shares of the capital stock of the Company then issued and outstanding 29,826 shares were represented at the meeting, as follows:

The Government of the Philippine Islands	29,809
Anselmo Hilario	10
Alberto Barretto	1
Milton E. Springer	1
Dalmacio Costas	1
Frank B. Ingersoll	1
Romarico Agcaoili	1
Laureano Mañalac	1
H. L. Heath	1
TOTAL	29,826

being more than sufficient to constitute a quorum.

On motion, duly made and seconded, and carried, it was—

RESOLVED, that the reading of the minutes of the previous meetings of stockholders, be dispensed with and that the said minutes be approved.

On motion, duly made and seconded, and carried, it was—

RESOLVED, that the reading of the annual report of the directors be dispensed with and that the annual balance sheets attached thereto be approved and the recommendations contained therein be received and filed.

The Governor-General, through his proxy, objected to the consideration of the foregoing motion on the ground that such business was not included in the call. This objection was overruled by the Chairman upon the ground that the consideration of such business is authorized by the terms of the call, to which ruling the Governor-General by his proxy noted this protest.

The Chairman announced that the next business in order was the election of five directors to serve during the ensuing year and until the election and qualification of their successors.

Thereupon Mr. Jose Abad Santos, seconded by Mr. James Ross, nominated

Messrs. Alberto Barretto
Milton E. Springer
Dalmacio Costas
Anselmo Hilario, and
Frank B. Ingersoll.

Mr. F. C. Fisher, seconded by Mr. Ingersoll, nominated

Messrs. Alberto Barretto
Romarico Agcaoili
Frank B. Ingersoll
H. L. Heath, and
Salvador Lagdameo.

There being no further nominations the Chairman declared the nominations closed.

The meeting then proceeded to vote by written ballot for the election of directors.

When the President of the Senate and the Speaker of the House of Representatives presented their ballot, the Governor-General through his proxy, renewed his protest as set out above, and demanded, for the reasons stated, that such ballot be not counted but that it be disregarded.

When the Governor-General through his proxy, presented his ballot, the Honorable Manuel L. Quezon and the Honorable Manuel Roxas renewed their protest as set out above and for the reasons stated demanded that the ballot of the Governor-General be not counted, but that it be disregarded. Objection was further made against the nomination by the Governor-General of Salvador Lagdameo, on the ground that he is not a stockholder of record, in his own right.

The ballots were then delivered to the Secretary of the meeting, who received the same, canvassed the votes cast, and made written report of said canvass as follows:

"This is to certify that I have carefully examined the ballots delivered to me by all the persons present at the meeting of the shareholders of the National Coal Company and find that votes have been cast as follows:

"Counting the votes cast by the Governor-General, through his proxy, and excluding those cast by the Hon. Manuel L. Quezon and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, the following is the result:

Alberto Barretto	29,822	votes
Frank B. Ingersoll	29,822	„
Romarico Agcaoili	29,810	„
H. L. Heath	29,810	„
Salvador Lagdameo ...	29,810	„
Milton E. Springer ...	12	„
Dalmacio Costas	12	„
Anselmo Hilario	12	„

"The ballot cast by the Governor-General reads as follows:

"NATIONAL COAL COMPANY
Election of Directors
December 6th, 1926.

"On behalf of the Governor-General of the Philippine Islands, and as his proxy, I hereby vote for each of the following named

persons, namely, Alberto Barretto, Frank B. Ingersoll, Romarico Agcaoili, Salvador Lagdameo and H. L. Heath."

as directors of the National Coal Company to be elected at the special meeting of the shareholders held December 6th, 1926, the 29,809 shares held by and registered in the name of the Government of the Philippine Islands.

For the Governor-General of
the Philipine Islands
F. C. FISHER,
Proxy.

"And that by counting the ballot cast by the Hon. Manuel L. Quezon, and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, and excluding the ballot cast by the Governor-General, through his proxy, the result is as follows:

Alberto Barretto	29,822	votes
Frank B. Ingersoll	29,822	„
Milton E. Springer ...	29,821	„
Dalmacio Costas	29,821	„
Anselmo Hilario	29,821	„
Romarico Agcaoili	1	vote
H. L. Heath	1	„
Salvador Lagdameo ...	1	„

"The said ballot cast by the Hon. Manuel L. Quezon and Hon. Manuel Roxas, on behalf of the Committee created by Act No. 2705, as amended, reads as follows:

"NATIONAL COAL COMPANY
ELECTION OF DIRECTORS—1926.

This is to certify that at a meeting duly called and held of the committee created by Sec. 4, Act 2705, as amended, at the office of the Company on December 6, 1926, at 2:30 o'clock in the afternoon, it was resolved that the votes represented by the 29,809 shares held by the Government of the Philippine Islands in the National Coal Company be voted for each of the following named persons as directors of the National Coal Company to wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

"By virtue whereof the said Committee hereby votes all the said 29,809 shares held by the Government of the Philippine Islands in the National Coal Co. in favor of the fol-

lowing persons as directors of the National Coal Co., to wit:

ALBERTO BARRETTO
MILTON E. SPRINGER
DALMACIO COSTAS
ANSELMO HILARIO
FRANK B. INGERSOLL

(Sgd.) D. COSTAS,
Secretary
of meeting of committee
established by Section 4 of
Act 2705, as amended.

COUNTERSIGNED:

(Sgd.) MANUEL L. QUEZON,
President,
Philippine Senate.
Member.

(Sgd.) MANUEL ROXAS,
Speaker,
House of Representatives.
Member."

IN WITNESS WHEREOF, I have signed this certificate at Manila, P. I., this 6th day of December, 1926.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

Thereupon, the Chairman announced that in accordance with his previous decision recognizing the Hon. Manuel L. Quezon, President of the Senate, and the Hon. Manuel Roxas, Speaker, House of Representatives, to represent and vote at this meeting the shares of stock held by the Government of the Philippine Islands, the ballot presented by His Excellency, the Governor-General through his proxy was rejected, and he therefore declared that the following persons had received the number of votes lawfully cast at the election as set forth opposite their respective names:

Messrs.	ALBERTO BARRETTO ..	29,822 votes
	MILTON E. SPRINGER	29,821 „
	DALMACIO COSTAS ..	29,821 „
	ANSELMO HILARIO ..	29,821 „
	FRANK B. INGERSOLL	29,821 „

and thereupon declared them to be the duly elected directors of the Company.

His Excellency, the Governor-General, through his proxy, thereupon made known his protest against the ruling of the Chairman.

On motion, duly made and seconded, and carried, it was

RESOLVED, That the newly elected directors of the Company as recognized as the Chairman be, and they hereby are, authorized and requested to hold a meeting immediately upon the adjournment of the meeting for the purpose of electing the officers of the Company for the ensuing year.

The Governor-General through his proxy voted against this motion and requested that a meeting of the persons for whom his votes were cast at this election, and no others, be called forthwith for the purpose of organizing by the election of officers.

There being no further business the meeting adjourned.

(Sgd.) D. COSTAS,
Secretary of the Meeting.

APPROVED:

(Sgd.) ALBERTO BARRETTO,
Chairman.

On the 9th day of December, 1926, the Clerk of the Court issued the following order:

(CAPTION AND TITLE OMITTED)

Messrs. Milton E. Springer,
Dalmacio Costas and
Anselmo Hilario,
Manila, P. I.

WHEREAS, This Court on the 8th instant approved a resolution, which is quoted below:

> "Considering the petition filed in case G. R. No. 26979, The Government of the Philippine Islands vs. Milton E. Springer, et als., praying, for the reasons given, that judgment be rendered that the defendants therein, and each of them, to wit, Milton E. Springer, Anselmo Hilario, and Dalmacio Costas are not entitled to membership in the board of directors of the National Coal Company and that they be ousted and altogether excluded from said offices and perpetually enjoined from exercising any of the powers inherent therein, with costs, it is ordered that the respondents be required to demur or answer said petition within ten (10) days from notice hereof and from the receipt of copy of said petition."

NOW, THEREFORE, you are hereby ordered to demur or answer within ten days from the receipt of this summons with copy of the petition.

GIVEN BY THE HONORABLE RAMON AVANCEÑA, Chief Justice of the Supreme Court of the Philippine Islands, this 9th day of December 1926.

(Sgd.) V. ALBERT,
Clerk, Supreme Court, P. I.

On the 20th day of December, 1926, the defendants presented the following demurrer to the complaint:

(CAPTION AND TITLE OMITTED)

Now come the above-named defendants, and demur to the complaint of plaintiff herein, and for cause of demurrer allege:

That the complaint does not state facts sufficient to constitute a cause of action; in that -

(1) According to the facts as stated therein, the defendants are rightfully holding the offices of directors of the National Coal Company, and properly exercising the duties and powers thereof.

(2) Act No. 2705 of the Philippine Legislature, as amended by Act No. 2822 thereof, has not been disapproved by the Congress of the United

States. It has been in force and acted upon for a number of years by the executive officers of the Government of the Philippine Islands, including the Governor-General thereof. It is now in full force and effect.

(3) Executive Order No. 37, in so far as it purports to disregard and abrogate section 4 of said Act No. 2705, amended as aforesaid, is null and void and of no legal force and effect.

(4) Said Executive Order No. 37, in so far as it purports to change the manner of voting the stock owned by the Government of the Philippine Islands in the National Coal Company, is unconstitutional and void, for the reason that it impairs the obligation of the contracts existing between the said Government and the defendants herein, as stockholders of the said Company.

(5) The Governor-General is not authorized by law to exercise solely the voting power of such stock owned by the Government of the Philippine Islands.

WHEREFORE, defendants pray judgment that this action be dismissed, and for their costs.

Manila, December 20, 1926.

(Sgd.) JOSE ABAD SANTOS.
(Sgd.) ROSS, LAWRENCE & SELPH.
(Sgd.) PAREDES, BUENCAMINO & YULO.
(Sgd.) ARANETA & ZARAGOZA.
(Sgd.) CHAS. E. TENNEY.
(Sgd.) CAMUS, DELGADO & RECTO.
(Sgd.) MARIANO H. DE JOYA.
Attorneys for Defendants,
317-321 Masonic Temple,
Manila.

Copy received this 20th day
of December, 1926.

(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 24th day of December, 1926, the Court issued the following order:

> "The Court directed that the case of Government of the Philippine Islands vs. Springer et al., No. 26979, be set for hearing on Tuesday, January 11, 1927, at 9:00 a. m., each party to be allowed one hour and a half

for oral argument, to follow the usual procedure."

On the 29th day of December, 1926, the parties, both plaintiff and defendant, presented the following petition:

(CAPTION AND TITLE OMITTED)

And now come the Attorney-General and Jose Abad Santos, of counsel with the plaintiff and the defendants above named, respectively, and pray the Court to grant each party to the above-entitled case at least three hours for oral argument upon the demurrer filed by the defendants.

I.

This is a case of first impression in this jurisdiction. The determination of the issues involved in this case will have a far-reaching effect. Not only is the constitutionality of a statute passed by a coordinate branch of the Government drawn into question here, but the Court is called upon to consider the nature and extent of the powers conferred upon the Governor-General by the Organic Law. The decision in this case is bound to set an important precedent.

II.

In other important cases, such as the Judiciary Act case and the Book-keeping Act case, the Court had afforded the parties ample opportunity for oral argument. This is in line with the practice observed by the Supreme Court of the United States in passing upon important cases. Thus one case was argued for eleven days. (Warren, The Supreme Court in United States History, Vol. I, p. 123. In another case "The Court, when Mr. Lee terminated his argument, observed that they would attend to the observations of any person who was disposed to offer his sentiments." (Ibid., Ibid., p. 239.)

We, therefore, submit that this case is preeminently one which presents those special circumstances that call for considerable enlargement of the time for oral argument.

Manila, December 29, 1926.

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Of Counsel with Plaintiff.

(Sgd.) JOSE ABAD SANTOS,
Of Counsel with Defendants.

On the 31st day of December, 1926, the Court issued the following order:

> "Considering the motion of counsel for both parties in case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., praying, for the reasons given, that each party be granted at least three (3) hours for oral argument upon the demurrer filed by the defendants, it is ordered that two (2) hours only be granted for that purpose."

On the 11th day of January, 1927, the Court issued the following order:

> "At the hearing of case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., there appeared the Attorney-General, Attorney Fisher and Mr. Smith, Judge Advocate of the U. S. Army for the petitioner and Attorney J. Abad Santos, Gregorio Araneta and Judge Ross for the respondents. The Court granted the counsel for the petitioner ten (10) days within which to file a memorandum and another ten days was granted to the counsel for the respondents, from the date they receive copy of the petitioner's memorandum, within which to file their reply memorandum."

On the 17th day of January, 1927, the plaintiff filed its printed brief.

On the 22nd day of January, 1927, the defendants presented the following petition:

(CAPTION AND TITLE OMITTED)

And now comes Jose Abad Santos, of counsel with the defendants above named, and prays the Court for an extension of seven (7) days of the time for filing the brief for the defendants, in view of the fact that the time previously granted is found to be inadequate for the purpose of answering the brief filed for the plaintiff, which is voluminous.

Manila, January 22, 1927.

(Sgd.) JOSE ABAD SANTOS
Of Counsel with Defendants,
317-321 Masonic Temple,
Manila.

CONFORME:

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Of Counsel with Plaintiff,
Manila.

On the 24th day of January, 1927, the Court issued the following order:

"Considering the motion of the counsel for the defendants in case G. R. No. 26979,

the Government of the P. I. vs. Milton E. Springer, et als., praying, for the reasons given, that an extension of seven (7) days' time be given him for filing the brief for the defendants, MOTION GRANTED."

On the 1st day of February, 1927, the defendants presented the following petition:

(CAPTION AND TITLE OMITTED)

And now comes Jose Abad Santos, of counsel with the defendants above named, and prays the Court for another extension of seven (7) days of the time for filing the brief for the defendants. This request is made, in view of the fact that in the preparation of the said brief it has been found necessary to consult cases and authorities which are not easily available and whose search and examination involve considerable time and effort.

Manila, January 31, 1927.

(Sgd.) JOSE ABAD SANTOS,
Of Counsel with Defendants,
317-321 Masonic Temple,
Manila.

Copy hereof has been sent to Hon. Delfin Jaranilla, Attorney-General, of counsel with Plaintiff, Manila.

(Sgd.) JOSE ABAD SANTOS.

On the 1st day of February, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

Now comes the plaintiff in the above-entitled cause and respectfully makes known to this Honorable Court that a copy has been received of the petition of defendants for seven days' extension of the time allowed them within which to file their brief. Plaintiff desires to draw the attention of the Court to the fact that this case is one of great public importance and in which a prompt decision is essential, and therefore respectfully requests that if the extension prayed for is granted, it be upon the express understanding that no further time will be allowed defendants; and further, that the plaintiff may have five days after service upon it of defendants' brief within which to present its answering brief.

Manila, February 1st, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General,
Attorney for Plaintiff.

Copy hereof has been sent to Attorney Jose Abad Santos, of Counsel with Defendants.

(Sgd.) DELFIN JARANILLA,
Attorney-General.

On the 2nd day of February, 1927, the Court issued the following order:

> "Considering the motion of counsel for the defendants in case G. R. No. 26979, The Government of the P. I. vs. Milton E. Springer, et als., praying for another extension of seven (7) days' time for filing the defendants' brief therein, and considering the objection thereto filed by the Attorney-General, it is ordered that a last extension of seven (7) days is HEREBY GRANTED as prayed for, and the Attorney-General is granted five (5) days after the service of the defendants' brief, within which to present his reply brief."

Thereafter, the defendants filed their printed brief, and the plaintiff filed its printed reply brief.

On the 1st day of April, the Court rendered the following:

THE GOVERNMENT OF THE PHILIPPINE ISLANDS v. MILTON E. SPRINGER, *et al.*,

No. 26979.

1. CONSTITUTIONAL LAW: GOVERNMENT OF THE PHILIPPINE ISLANDS: DIVISION OF POWERS:—The powers entrusted by the Congress of the United States to

the Government of the Philippine Islands are distributed among three coordinate departments, the executive, the legislative, and the judicial.

2. ID.; ID.; ID.:—No department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others.

3. ID.; ID.; ID.:—It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law.

4. ID.; ID.; ID.:—The chief exponent of autonomy in domestic affairs in the Government of the Philippine Islands is the Philippine Legislature. The Governor-General on the other hand is the head of the Government and symbolizes American sovereignty. Under such a political system, lines of demarcation between the legislative and the executive departments are difficult to fix, and attempted encroachments of one on the other may be expected. It is, however, the duty of the Supreme Court, as the guardian of the constitution, to enforce fundamental principles.

5. ID.; ID.; ID.; EXECUTIVE POWER:—The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. The Governor-General since the approval of the last Organic Act has no prerogative powers.

6. ID.; ID.; ID.; ID.:—The Congress of the United States clearly intended that the Governor-General's power should be commensurate with his responsibility. The Congress never intended that the Governor-General should be saddled with the responsibility of administering the government and of executing the laws but shorn of the power to do so.

7. ID.; ID.; ID.; LEGISLATIVE POWER:—The Organic Act grants general legislative power except as otherwise provided therein to the Philippine Legislature. The legislative power of the Philippine Government is granted in general terms subject to specific limitations.

8. ID.; ID.; ID.; ID.:—Legislative power is the authority, under the constitution, to make laws, and to alter and repeal them. The Legislature cannot lawfully exercise powers which are in their nature essentially executive or judicial. The Legislature cannot make a law and then take part in its execution or

construction. (Cooley's Constitutional Limitations, 7th ed., pp. 126-131, 157-162.)

9. ID.; ID.; ID.; APPOINTMENT TO OFFICE:—The authorities on the question, Where does the power to appoint to public office reside?, reviewed and certain principles deduced therefrom. The particular wording of the constitution involved, and its correct interpretation predetermines the result. The selection of persons to perform the functions of government is primarily a prerogative of the people. The appointment of public officials is generally looked upon as properly an executive function. Appointments may be made by the Legislature or the courts, but when so made should be taken as an incident to the discharge of functions properly within their respective spheres.

10. ID.; ID.; ID.; ID.; APPOINTMENT TO OFFICE IN THE PHILIPPINES:—The right to appoint to office has been confided, with certain well defined exceptions, by the Government of the United States to the executive branch of the government which it has set up in the Philippines. Under a system of government of delegated powers, under which delegation legislative power vests in the Philippine Legislature and executive power vests in the Governor-General, and under which delegation a general power of ap-

pointment resides in the Governor-General and a specified power of appointment resides in the Philippine Legislature, the latter cannot directly or indirectly perform functions of an executive nature through the designation of its presiding officers as majority members of a body which has executive functions.

11. ID.; ID.; ID.; ID.; ID.:—The Legislature may add to, but may not diminish, the power of appointment of the Governor-General.

12. ID.; ID.; ID.; ID.; ID.:—The exceptions made in favor of the Legislature as to appointments to office strengthen rather than weaken the grant to the executive. The expression of one thing in the constitution is necessarily the exclusion of things not expressed.

13. ID.; ID.; ID.; ID.; ID.:—Appointment to office in the Philippines is intrinsically an executive act involving the exercise of discretion.

14. ID. ; ID.; ID.; ID.; ID.:—The decision of the United States Supreme Court in the case of Myers v. United States (1926, U. S. Sup. Ct. Adv. Ops. p. 27) followed.

15. ID.; ID.; ID.; ID.; PUBLIC OFFICERS:—Membership in the voting Committee creat-

ed for the National Coal Company is an office or executive function.

16. ID.; ID.; ID.; CORPORATIONS:—The incorporation of the National Coal Company has not served to disconnect the company or the stock which the Government owns in it from the Government and executive control.

17. ID.; ID.; ID.; ID.:—The Legislature is empowered to create and control private corporations.

18. ID.; ID.; ID.; ID.:—The National Coal Company is a private corporation.

19. ID.; ID.; ID.; ID.:—By becoming a stockholder in the National Coal Company, the Government divested itself of its sovereign character so far as respects the transactions of the corporation.

20. ID.; ID.; ID.; ID.:—The National Coal Company remains an agency or instrumentality of government.

21. ID.; ID.; ID.; ID.:—The Government, like any other stockholder, is justified in intervening in the transactions in the corporation, and in protecting its property rights in the corporation.

22. ID.; ID.; ID.; ID.:—The duty of caring for government property is neither judicial nor legislative in character but is executive.

23. ID.; ID.; ID.; RULE OF PARTIAL INVALIDITY:—The striking out may not necessarily be by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there.

24. ID.; ID.; ID.; RATIFICATION BY CONGRESS:—A territorial statute invalid when enacted is not validated by the failure of the Congress expressly to disapprove it.

25. ID.; ID.; ID.; PUBLIC OFFICERS:—Although there may be a *de facto* officer in a *de jure* office, there cannot be a *de facto* officer in a *de facto* office.

26. ID.; ID.; ID.; VOTING COMMITTEE FOR NATIONAL COAL COMPANY:— So much of section 4 of Act 2705, as amended by section 2 of Act 2822, as purports to vest the voting power of the government stock in the National Coal Company in the President of the Senate and the Speaker of the House of Representatives, is unconstitutional and void.

27. EXTRAORDINARY LEGAL REMEDIES; QUO WARRANTO:—In *quo warranto* proceedings, the failure of the defendant to prove his title does not establish that of the plaintiff. The inquiry may go in *quo warranto* proceedings to the extent of determin-

ing the validity of an Act authorizing offices.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

IN BANC

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Plaintiff.	No. 26979 Submitted: Promulgated: Present: Avanceña, C. J. Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.
vs	
MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, Defendants.	

x.....x

DECISION

MALCOLM, J.:—

This is an original action of *quo warranto* brought in the name of the Government of the Phil-

ippine Islands against three directors of the National Coal Company who were elected to their positions by the legislative members of the committee created by Acts 2705 and 2822. The purpose of the proceeding is to test the validity of the part of section 4 of Act 2705, as amended by section 2 of Act 2822, which provides that "The voting power of all such stock (in the National Coal Company) owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The material facts are averred in the complaint of the plaintiff and admitted in the demurrer of the defendants.

The National Coal Company is a corporation organized and existing by virtue of Act 2705 of the Philippine Legislature as amended by Act 2822, and of the Corporation Law. By the terms of the charter of the corporation, the Governor-General was directed to subscribe on behalf of the Government of the Philippine Islands for at least fifty-one per cent of the capital of the corporation. The

Government eventually became the owner of more than ninety-nine per cent of the thirty thousand outstanding shares of stock of the National Coal Company. Only nineteen shares stand in the names of private individuals.

On November 9, 1926, the Governor-General promulgated Executive Order No. 37. Reference was made therein to opinions of the Judge Advocate General of the United States Army and of the Acting Attorney-General of the United States wherein it was held that the provisions of the statutes passed by the Philippine Legislature creating a voting committee or board of control, and enumerating the duties and powers thereof with respect to certain corporations in which the Philippine Government is the owner of stock, are nullities. Announcement was made that on account of the invalidity of the portions of the Acts creating the voting committee or board of control, the Governor-General would, thereafter, exercise exclusively the duties and powers theretofore assumed by the voting committee or board of control. Notice of the contents of this executive order was given to the President of the Senate and the Speaker of the House of Representatives. (XXIV O. G. 2419.)

A special meeting of the stockholders of the National Coal Company was called for December 6, 1926, at three o'clock in the afternoon, for the purpose of electing directors and the transaction of such other business as might properly come before the meeting. Prior thereto, on November 29, 1926, the President of the Senate and the Speaker of the House of Representatives as members of the voting committee, requested the Governor-General to convene the committee at 2:30 p. m., on December 6, 1926, to decide upon the manner in which the stock held by the Government in the National Coal Company should be voted. The Governor-General acknowledged receipt of this communication but declined to participate in the proposed meeting. The President of the Senate and the Speaker of the House of Representatives did in fact meet at the time and place specified in their letter to the Governor-General. It was then and there resolved by them that at the special meeting of the stockholders, the votes represented by the stock of the Government in the National Coal Company, should be cast in favor of five specified persons for directors of the company.

On December 6, 1926, at three o'clock in the afternoon, the special meeting of the stockholders of the National Coal Company was held in accordance with the call. The Governor-General, through his representative, asserted the sole power to vote the stock of the Government. The President of the Senate and the Speaker of the House of Representatives attended the meeting and filed with the secretary of the company a certified copy of the minutes of the meeting of the committee held at the office of the company a half hour before. The Governor-General, through his representative, thereupon objected to the asserted powers of the President of the Senate and the Speaker of the House of Representatives, and the latter likewise objected to the assertion of the Governor-General.

The chair recognized the President of the Senate and the Speaker of the House of Representatives in their capacity as majority members of the voting committee as the persons lawfully entitled to represent and vote the government stock. To this the representative of the Governor-General made protest and demanded that it be entered of record in the minutes. The vote cast by the President of the Senate and the Speaker of the House

of Representatives was in favor of Alberto Barretto, Milton E. Springer, Dalmacio Costas, Anselmo Hilario, and Frank B. Ingersoll. The Governor-General, through his representative, alleging representation of the government stock, cast his vote in favor of Alberto Barretto, Romarico Agcaoili, Frank B. Ingersoll, H. L. Heath, and Salvador Laggameo. The chair declared the ballot cast by the President of the Senate and the Speaker of the House as electing the names therein indicated, directors of the National Coal Company

Immediately after the stockholders' meeting, the persons declared by the chairman to have been elected, met and undertook to organize the board of directors of the National Coal Company by the election of officers. All the directors for whom the President of the Senate and the Speaker of the House of Representatives voted and who were declared elected at the meeting of the stockholders participated in this meeting. Included among them, were the three defendants, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario.

The applicable legal doctrines are found in the Organic Law, particularly in the Organic Act, the

Act of Congress of August 29, 1916, and in statutes enacted under authority of that Act, and in decisions interpretative of it.

The Government of the Philippine Islands is an agency of the Congress of the United States. The powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial. It is true that the Organic Act contains no general distributing clause. But the principle is clearly deducible from the grant of powers. It is expressly incorporated in our Administrative Code. It has time and again been approvingly enforced by this Court.

No department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others. Again it is true that the Organic Law contains no such explicit prohibition. But it is fairly implied by the division of the Government into three departments. The effect is the same whether the prohibition is expressed or not. It has repeatedly been announced by this Court that each

of the branches of the Government is in the main independent of the others. The doctrine is too firmly imbedded in Philippine institutions to be debatable. (Administrative Code, sec. 17; Barcelon v. Baker (1905) 5 Phil. 87; U. S. v. Bull (1910) 15 Phil. 7; Severino v. Governor-General (1910) 16 Phil. 366; Forbes v. Chuoco Tiaco (1910) 16 Phil. 534; Province of Tarlac v. Galo (1913) 26 Phil. 338; Concepcion v. Paredes (1921) 42 Phil. 599; U. S. v. Ang Tang Ho (1922) 43 Phil. 1; Abueva v. Wood (1924) 45 Phil. 612; Alejandrino v. Quezon (1924) 47 Phil. 83.)

It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. The Governor-General must find his powers and duties in the fundamental law. An Act of the Philippine Legislature must comply with the grant from Congress. The jurisdiction of this Court and other courts is derived from the constitutional provisions.

These canons of political science have more than ordinary significance in the Philippines. To

the Government of the Philippine Islands has been delegated a large degree of autonomy, and the chief exponent of that autonomy in domestic affairs is the Philippine Legislature. The Governor-General on the other hand is the head of the Government and symbolizes American sovereignty. That under such a political system, lines of demarcation between the legislative and the executive departments are difficult to fix, and that attempted encroachments of one on the other may occur, should not dissuade the Supreme Court, as the guardian of the constitution, from enforcing fundamental principles.

The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. In addition to specified functions, he is given "general supervision and control of all the departments and bureaus of the government of the Philippine Islands as far as is not inconsistent with the provisions of this Act." He is also made "responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands." The authority of the Governor-General is made secure by

the important proviso "that all executive functions of government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General." (Organic Act, secs. 21, 22.) By the Administrative Code, "the Governor-General, as Chief Executive of the Islands, is charged with the executive control of the Philippine Government, to be exercised in person or through the Secretaries of Departments, or other proper agency, according to law." (Sec. 58.)

The Organic Act grants general legislative power except as otherwise provided therein to the Philippine Legislature. (Organic Act, secs. 8, 12.) Even before the approval of the existing Organic Act, it was held that the Philippine Legislature has practically the same powers in the Philippine Islands within the sphere in which it may operate as the Congress of the United States. (Chanco v. Imperial (1916) 34 Phil. 329.) The rule judicially stated is now that an Act of the Philippine Legislature which has not been expressly disapproved by Congress is valid, unless the subject-matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the Or-

ganic Law. The legislative power of the Philippine Government is granted in general terms subject to specific limitations. (Gaspar v. Molina (1905) 5 Phil. 197; U. S. vs. Bull *supra; In re* Guariña (1913) 24 Phil. 37; U. S. v. Limsiongco (1920) 41 Phil. 94; Concepcion v. Paredes *supra.*)

An independent judiciary completes the governmental system. The judicial power is conferred on the Supreme Court, courts of first instance, and inferior courts. (Organic Act, sec. 26.)

It is axiomatic that the Philippine Legislature was provided to make the law, the office of the Governor-General to execute the law, and the judiciary to construe the law What is a legislative, an executive, or a judicial act, as distinguished one from the other, is not always easy to ascertain. A precise classification is difficult. Negatively speaking, it has been well said that "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law." (U. S. v. Ang Tang Ho *supra.*)

It is legislative power which has been vested in the Philippine Legislature. What is legislative

power? Judge Cooley says he understands it "to be the authority, under the constitution, to make laws, and to alter and repeal them." Those matters which the constitution specifically confides to the executive "the legislature cannot directly or indirectly take from his control." (Cooley's Constitutional Limitations, 7th ed., pp. 126-131, 158-162.) President Wilson in his authoritative work, "The State," page 487, emphasizes by italics that legislatures "are *law making bodies* acting within the gifts of charters, and are by these charters in most cases very strictly circumscribed in their action." If this is true, the converse that legislative power is not executive or judicial or governmental power needs no demonstration. The Legislature cannot lawfully exercise powers which are in their nature essentially executive or judicial. The Legislature cannot make a law and then take part in its execution or construction. So the Philippine Legislature is not a partaker in either executive or judicial power, except as the Philippine Senate participates in the executive power through having the right to confirm or reject nominations made by the Governor-General, and except as the Legislature participates in the judicial power through being made the sole

judge of the elections, returns, and qualifications of its elective members and through having the right to try its members for disorderly behavior. The Philippine Legislature may nevertheless exercise such auxiliary powers as are necessary and appropriate to its independence and to make its express powers effective. (McGrain v. Daugherty (1927) U. S. Sup. Ct. Adv. Ops. 370.)

When one enters on a study of the abstract question, where does the power to appoint to public office reside?, one is nearly burried in a mass of conflicting authority. Yet we have been at pains to review all of the cases cited by counsel and others which have not been cited. Shaking ourselves loose from the encumbering details of the decisions, we discern through them a few elemental truths which distinguish certain cases from others and which point the way for us in the Philippines.

The first principle which is noticed is that the particular wording of the constitution involved, and its correct interpretation predetermines the result. Does the constitution deny the legislative body the right of exercising the appointing power? The legislature may not do so. (State v. Kennon (1857)

7 O. St. 547; Clark v. Stanley (1872) 66 N. C. 28.) Does the constitution confer upon the governor the power to appoint certain officers and upon the legislature the power to prescribe the manner of appointment? The authorities are in conflict as to whether the legislature may itself make the appointment. Does the constitution merely contain the usual clause distributing the powers of government and no clause regulating appointments? The weight of judicial opinion seems to be that the power of appointing to office is not exclusively an executive function and that the legislature may not only create offices but may also fill them itself, but with a vigorous opposition in most respectable quarters. (Contrast Pratt v. Breckinridge (1901) 112 Ky. 1, and State v. Washburn (1901) 167 Mo. 680, with People v. Freeman (1889) 80 Cal. 233, and Richardson v. Young (1909) 122 Tenn. 471.)

The second thought running through the decisions is that in the State governments, the selection of persons to perform the functions of government is primarily a prerogative of the people. The general power to appoint officers is not inherent in any branch of the government. The people may exercise their political rights directly or by delegation. Should

the people grant the exclusive right of appointment to the governor, he possesses that right; but if they should otherwise dispose of it, it must be performed as the sovereign has indicated. Inasmuch, however, as the legislative body is the repository of plenary power, except as otherwise restricted, and the chief executive of the State is not, legislative bodies usually possess wide latitude in the premises. But this situation does not obtain in the Philippines where the people are not sovereign, and where constitutional rights do not flow from them but are granted by delegation from Congress.

It may finally be inferred from the books that the appointment of public officials is generally looked upon as properly an executive function. The power of appointment can hardly be considered a legislative power. Appointments may be made by the Legislature or the courts, but when so made should be taken as an incident to the discharge of functions properly within their respective spheres. (State v. Brill (1907) 100 Minn. 499; Stockman v. Leddy (1912) 55 Colo. 24; Spartanburg County v. Miller (1924) 132 S. E. 673; Mechem on Public Officers, secs. 103-108; Mechem, the Power to Ap-

point to Office; Its Location and Limits, 1 Mich. Law Rev. (1903) 531.)

From the viewpoint of one outside looking in, it would seem that the State legislatures have all too often been permitted to emasculate the powers properly belonging to the executive department, and that the governor of the State has been placed with the responsibility of administering the government without the means of doing so. The operations of the executive department have been fundamentally varied by the legislative department. The Legislature has absorbed strength, the executive has lost it. This tendency has rather been tolerated than acquiesced in. The executive should be clothed with sufficient power to administer efficiently the affairs of state. He should have complete control of the instrumentalities through whom his responsibility is discharged. It is still true, as said by Hamilton, that "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government." The mistakes of State governments need not be repeated here.

The history of the power of appointment and the stand taken by the judiciary on the question in the State of Kentucky is of more than ordinary interest. Kentucky was permitted to become an independent State by Virginia. The clause in the Kentucky constitution separating and guarding the powers of government came from the pen of the author of the Declaration of Independence, Thomas Jefferson. He it was who, in a letter to Samuel Kercheval, dated July 16, 1816, said: "Nomination to office is an executive function. To give it to the legislature, as we do in Virginia, is a violation of the principle of the separation of powers. It swerves the members from correctness by temptation to intrigue for office for themselves, and to a corrupt barter for votes, and destroys responsibility by dividing it among a multitude." Possibly inspired to such action by the authorship of the portion of the State constitution which was under consideration, in the early days of the Supreme Court of Kentucky, Mr. Chief Justice Robertson in the case of Taylor v. Commonwealth (1830, 3 J. J. Marshall 401) announced that "Appointments to office are intrinsically executive," but that it might be performed by a judicial officer when the duties of the

office pertain strictly to the court. This opinion was shaken in the case of Sinking Fund Comissioners v. George (1898, 104 Ky. 260) only to be afterwards reaffirmed in Pratt v. Breckinridge (1901, 112 Ky. 1), and in Sibert v. Garrett (1922, 246 S. W. 455). In the decision in the latter case, one of the most recent on the subject, the Supreme Court of Kentucky after reviewing the authorities refused to be frightened by the bugaboo that numerically a greater number of courts take a contrary view. It said: "We are convinced that they by doing so are inviting destruction of the constitutional barriers separating the departments of government, and that our interpretation is much the sounder one and is essential to the future preservation of our constitutional form of government as originally intended by the forefathers who conceived it. * * * Such power (of appointment) on the part of the Legislature, if a full exercise of it should be persisted in, would enable it to gradually absorb to itself the patronage and control of the greater part of the functioning agencies of the state and county governments, and, thus endowed, it would be little short of a legislative oligarchy."

It is of importance, therefore, not to be confused by State decisions, and invariably to return to the exact provisions of the Philippine Organic Law. It is the intention of the authors of that Law which should be searched out and effectuated.

The right to appoint to office has been confided, with certain well defined exceptions, by the Government of the United States to the executive branch of the government which it has set up in the Philippines. Let the Organic Law speak upon this proposition.

The original government inaugurated in the Philippines after American occupation was military in nature, and exercised all the powers of government, including, of course, the right to select officers. The original civil authority with administrative functions established here was the Second Philippine Commission. President McKinley, in his instructions to the Commission of April 7, 1900, ever since considered as the initial step taken to introduce a constitutional government, provided that until further action should be taken by Congress or otherwise, "The Commission will also have power * * * to appoint to office such officers under the judicial, educational, and civil service systems, and in the

municipal and departmental governments, as shall be provided for." When the first Civil Governor was appointed on June 21, 1901, the President again took account of the power of appointment in the following language: "The power to appoint civil officers, heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor with the advice and consent of the Commission." The Congress when it came to make legislative provision for the administration of the affairs of civil government in the Philippine Islands, in the Act of Congress of July 1, 1902, the Philippine Bill, "approved, ratified, and confirmed," the action of the President in creating the Philippine Commission in the manner and form set forth in the Instructions of the President and in creating the office of Civil Governor and authorizing said Civil Governor to exercise the powers of government to the extent and in the manner set forth in the executive order dated June 21, 1901. (Philippine Bill, sec. 1.) Congress in the same law provided that the Islands "shall continue to be governed as thereby and herein provided." (See Opinion of Attorney-General Araneta on the power of the Governor-General to apoint and remove civil officers, 3 Op. Atty.-Gen. 563.)

Thus stood the right to appoint to office for fourteen years.

The Organic Act of August 29, 1916, included what follows on the subject of appointments. The Governor-General "shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint." (Organic Act, sec. 21.) The exception to the general grant is that the Philippine Legislature "shall provide for the appointment and removal of the heads of the executive departments by the Governor-General." (Organic Act, sec. 22.) Each House of the Philippine Legislature may also elect a presiding officer, a clerk, a sergeant at arms, and such other officers and assistants as may be required. (Organic Act, sec. 18.) The Philippine Legislature is authorized to choose two Resident Commissioners to the United States. (Organic Act, sec. 20.) The prohibition on the local Legislature, which has been thought of as referring to the Resident Commissioners, is that "No senator or representative shall during the time for which he may have been elected, be

eligible to any office the election to which is then vested in the legislature, nor shall he be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." (Organic Act, sec. 18.)

The Administrative Code provides the following: "In addition to his general supervisory authority, the Governor-General shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth," including the special powers and duties "(a) To nominate and appoint officials, conformably to law, to positions in the service of the Government of the Philippine Islands. (b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the Government of the United States, the Governor-General may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands." (Sec. 64, (*a*), (*b*). The Administrative Code lists the officers appointable by the Governor-General. (Sec. 66.)

It will be noticed that the Governor-General, in addition to being empowered to appoint the officers authorized by the Organic Act and officers whom thereafter he might be authorized to appoint, was to continue to possess the power to appoint such officers as could be appointed by him when the Organic Act was approved. The careful phraseology of the law and the connection provided by the word "now" with prior Organic laws is noteworthy. It would not be at all illogical to apply the same rule to the Governor-General in his relations with the Legislature which the judiciary uniformly applies to the Courts in their relations with the Legislature, which is, that the Legislature may add to, but may not diminish, the jurisdiction of the courts—The Legislature may add to, but may not diminish, the power of the Governor-General. (Organic Act, sec. 26; Barrameda v. Moir (1913) 25 Phil. 44; *In re* Guariña *supra;* U. S. v. Limsiongco *supra.*)

It will also not escape attention that the only reference made to appointments by the Legislature relates to the selection of Secretaries of Departments, of officers and employees for the Legislature, and of Resident Commissioners, from which it would

naturally be inferred that no other officers and employees may be chosen by it. The exceptions made in favor of the Legislature strengthen rather than weaken the grant to the executive. The specific mention of the authority of the Legislature to name certain officers is indicative of a purpose to limit the legislative authority in the matter of selecting officers. The expression of one thing in a constitution is necessarily the exclusion of things not expressed. Had it been intended to give to the Philippine Legislature the power to name individuals to fill the offices which it has created, the grant would have been included among the legislative powers and not among the executive powers. The administrative control of the Government of the Philippine Islands by the Governor-General to whom is confided the responsibility of executing the laws excludes the idea of legislative control of administration.

Possibly, the situation may better be visualized by approaching the question by a process of elimination. Is the power of appointment judicial? No one so contends. Is the power of appointment legislative? Not so if the intention of the Organic Law be carried out and if the Legislature be confined to its

law-making function. Is the power of appointment executive. It is.

The exact question of where the power of appointment to office is lodged has never heretofore arisen in this jurisdiction. But a decision of this Court and a controlling decision of the United States Supreme Court are in point.

In Concepcion v. Paredes, *supra*, this Court had before it a law which attempted to require a drawing of lots for judicial positions in derogation of executive power. The case was exhaustively argued and after prolonged consideration, the questioned portion of the law was held invalid as in violation of the provision of the Organic Act. Following the lead of Kentucky, it was announced that "*Appointment to office is intrinsically an executive act* involving the exercise of discretion."

In the case of Myers v. United States (1926, U. S. Sup. Ct. Adv. Ops. p. 27), the United States Supreme Court had presented the question whether, under the Constitution, the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate. The answer

was that he has. The decision is epochal. The Chief Justice quoted from Madison the following:

> "If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive and judicial powers. If there is any point in which the separation of the legislative and executive powers ought to be maintained with great caution, it is that which relates to officers and offices.
>
> "The powers relative to offices are partly legislative and partly executive. The legislature creates the office, defines the powers, limits its duration and annexes a compensation. This done, the legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an executive nature. Although it be qualified in the Constitution, I would not extend or strain that qualification beyond the limits precisely fixed for it. We ought always to consider the Constitution with an eye to the principles upon which it was founded. In this point of view, we shall readily conclude that if the legislature determines the powers, the honors, and emoluments of an office, we should be insecure if they were to designate the officer also. The nature of things restrains and confines the legislative

and executive authorities in this respect; and hence it is that the Constitution stipulates for the independence of each branch of the Government." 1 Annals of Congress, 581, 582. Also see Madison in the Federalist, Nos. 47, 76.

The distinguished Chief Justice said:

"* * * * The Constitution was so framed as to vest in the Congress all legislative powers therein granted, to vest in the President the executive power, and to vest in one Supreme Court and such inferior courts as Congress might establish, the judicial power. From this division on principle, the reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expounded to blend them no more than it affirmatively requires. Madison, 1 Annals of Congress, 497.

* * *

"The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates. This view has since been repeatedly affirmed by this court. * * * * As he is charged specifically to take

care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. Fisher Ames, 1 Annals of Congress, 474. *It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.*

"It is quite true that in state and colonial governments at the time of the Constitutional Convention, power to make appointments and removals had sometimes been lodged in the legislatures or in the courts, but such a disposition of it was really vesting part of the executive power in another branch of the government.

* * * *

"We come now to a period in the history of the Government when both Houses of Congress attempted to reverse this constitutional construction and to subject the power of removing executive officers appointed by the President and confirmed by the Senate to the control of the Senate, indeed finally to the assumed power in Congress to place the removal of such officers anywhere in the Government.

* * * *

"The extreme provisions of all this legislation were a full justification for the considerations so strongly advanced by Mr. Madison and his associates in the First Congress, for insisting that the power of removal of executive officers by the President alone was essential in the division of powers between the executive and the legislative bodies. It exhibited in a clear degree the paralysis to which a partisan Senate and Congress could subject the executive arm and destroy the principle of executive responsibility, and separation of the powers sought for by the framers of our Government, if the President had no power to removal save by consent of the Senate. It was an attempt to redistribute the powers and minimize those of the President.

* * * *

> "For the reasons given, we must therefore hold that the provision of the law of 1876 by which the unrestricted power of removal of first class postmasters is denied to the President is in violation of the Constitution and invalid."

Membership in the Committee created by Acts 2705 and 2822 is an office. No attempt will be made to accomplish the impossible, which is to formulate an exact judicial definition of the term "office." The point is that the positions in question constitute an "office," whether within the meaning of that word as used in the Code of Civil Procedure under the topic "Usurpation of Office," and in the jurisprudence of Ohio from which these portions of the Code were taken; whether within the local definitions of "office" found in the Administrative Code and the Penal Code; or whether within the constitutional definitions approved by the United States Supreme Court. (Code of Civil Procedure, secs. 197 *et seq.*, 519; Act 136, sec. 17; State v. Kennon *supra*, cited approvingly in Sheboygan v. Parker (1866) 3 Wall. 93; Administrative Code, sec. 2; Penal Code, arts. 264, 401.) Paraphrasing the United States Supreme Court in a late decision, there

is not lacking the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law. (Metcalf & Eddy v. Mitchell (1926) 269 U. S. 514; U. S. v. Maurice (1823) 2 Brook. 96; U. S. v. Hartwell (1868) 6 Wall. 385.) The Legislature did more than add incidental or occasional duties to existing executive offices for two of the members of the voting committee are representatives of the legislative branch. The Supreme Court of North Carolina has held that the Act of the General Assembly giving to the President of the Senate and the Speaker of the House of Representatives the power to appoint proxies and directors in all corporations in which the State has an interest, creates a public office and fills the same by appointment of the Legislature. (Clark v. Stanley (1872) 66 N. C. 28; Howerton v. Tate (1873) 68 N. C. 498; Shoemaker v. U. S. (1892) 147 U. S. 282; Advisory Opinion to Governor (1905) 49 Fla. 269; Mechem on Public Officers, Ch. I.)

To tell the truth, it is possible that the earnestness of counsel has just led us to decide too much. Not for a moment should there be dismissed from our minds the unusual and potently effective pro-

viso of section 22 of the Organic Act, "*That all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General.*" At the very least, the performance of duties appurtenant to membership in the voting committee is an executive function of the Government, which the Organic Act requires must be subject to the unhampered control of the Governor-General. The administrative domination of a governmentally organized and controlled corporation is clearly not a duty germane to the law-making power.

The incorporation of the National Coal Company has not served to disconnect the company or the stock which the Government owns in it from the Government and executive control. The Philippine Legislature is empowered to create and control private corporations. (Martinez v. La Asociacion de Señoras Damas del Santo Asilo de Ponce (1909) 213 U. S. 20.) The National Coal Company is a private corporation. (National Coal Company v. Collector of Internal Revenue (1924) 46 Phil. 583.) By becoming a stockholder in the National Coal Company, the Government divested itself of its so-

vereign character so far as respects the transactions of the corporation. (Bank of the U. S. v. Planters' Bank of Georgia (1824) 9 Wheat. 904.) Unlike the Government, the corporation may be sued without its consent, and is subject to taxation. Yet the National Coal Company remains an agency or instrumentality of government. Mr. Chief Justice Marshall in speaking of the Bank of the United States said, "It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation." (Osborn v. Bank of the U. S. (1824) 9 Wheat. 738; National Bank v. Commonwealth (1869) 9 Wall. 353; Railroad Co. v. Peniston (1873) 18 Wall. 5; Chesapeake & Delaware Canal Co. v. U. S. (1918) 250 U. S. 123.) Of the National Coal Company, it has been said by Mr. Justice Johnson as the organ of the court in National Coal Company v. Collector of Internal Revenue, *supra*, that "The Government of the Philippine Islands is made the majority stokholder, evidently in order to insure proper governmental supervision and control, and thus to place the Government in a position to render all possible encouragement, assistance and help in the prosecution and furtherance of the company's business."

The analogy is closer in the companion National Bank case, No. 27225.

It further is incontrovertible that the Government, like any other stockholder, is justified in intervening in the transactions in the corporation, and in protecting its property rights in the corporation. Public funds were appropriated to create the National Coal Company. Those funds were used to purchase stock. The voting of the government stock is the prerogative of the stockholder, not the prerogative of the corporation. It is a transaction in, but not of, the corporation. The stock is property. The Government, the owner of the majority stock in the company, naturally dominates the management of its property. The Government may enforce its policies and secure relief in and through the corporation and as a stockholder.

The situation will be better understood if it be recalled that, in addition to the National Coal Company (Acts 2705 and 2822), the Philippine Legislature has created the Philippine National Bank (Acts 2612, 2747, 2938, and 3174), the National Petroleum Company (Act 2814), the National Development Company (Act 2849), the National Cement Company (Act 2855), and the National Iron

Company (Act 2862). The aggregate authorized capital stock of these companies is ₱54,500,000.00. The Legislature has in each of these instances directed that a majority of the shares of stock shall be purchased for the Government, and has appropriated money for this purpose. There have likewise been authorized corporations for the promotion of the merchant marine (Act 2754). The stock of the Manila Railroad Company has been purchased for the Government. (Act 2574, 2752, and 2923.) All these are conspicuous instances of a paternally inclined government investing large sums in business enterprises which after acquisition or organization have vitally concerned the Government. In all of the companies mentioned, the stock is to be voted by a committee or board of control, consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. The power of the majority stockholders to vote the government stock in the corporation carries with it the right, under our Corporation Law, to elect all the directors, to remove any or all of them, and to dissolve the corporation by voluntary proceedings. (Corporation Law, secs. 31, 34, 62.) In the case of the Philippine National Bank, the law explicitly

enumerates various functions of the bank which may not be performed without the express approval of the Board of Control. (Act 2938.)

Very important property rights are involved in the transactions in the governmentally directed corporations. Just as surely as the duty of caring for government property is neither judicial nor legislative in character is it as surely executive. Yet a majority of the voting committee or Board of Control is made up of the presiding officers of the two houses of the Legislature and they are in a position to dictate action to the directors and subordinate personnel of these corporations.

Based on all the foregoing considerations, we deduce that the power of appointment in the Philippines appertains, with minor exceptions, to the executive department; that membership in the voting committee in question is an office or executive function; that the National Coal Company and similar corporations are instrumentalities of the government; that the duty to look after government agencies and government property belongs to the executive department; and that the placing of members of the Philippine Legislature on the voting com-

mittee constitutes an invasion by the Legislative Department of the privileges of the Executive Department. Under a system of government of delegated powers, under which delegation legislative power vests in the Philippine Legislature and executive power vests in the Governor-General, and under which delegation a general power of appointment resides in the Governor-General and a specified power of appointment resides in the Philippine Legislature, the latter cannot directly or indirectly perform functions of an executive nature through the designation of its presiding officers as majority members of a body which has executive functions. That is the meaning we gather from the tri-partite theory of the division of powers. That is the purport of the provisions of the Organic Law. That has been the decided trend of persuasive judicial opinion.

The intimation contained in the conclusions just reached does not necessarily mean that the plaintiff will be privileged to substitute the directors designated by the Governor-General for those designated by the two presiding officers in the Legislature. The burden has heretofore been on the defendants. From this point, it will be on the plaintiff. It is well es-

tablished in *quo warranto* proceedings that the failure of the defendant to prove his title does not establish that of the plaintiff. (People v. Tacher (1874) 10 N. Y. 525.)

The answer to the problem comes from two directions. The Acting Attorney-General of the United States finds the solution in the supreme executive power entrusted to the Governor-General, while counsel for the plaintiff presses upon us the rule of statutory construction pertaining to partial invalidity. We are frank to say that we experience difficulty in following the lead of the law officer of the Government of the United States. The Governor-General since the approval of the last Organic Act has had no prerogative powers. His powers are so clearly and distinctly stated that there ought to be no doubt as to what they are. Like the Legislature and the judiciary, like the most inconspicuous employee, the Governor-General must find warrant for his every act in the law. At this stage of political development in the Philippines, no vague residium of power should be left to lurk in any of the provisions of the Organic Law.

Counsel for the plaintiff rely on a decision of this Court (U. S. v. Rodriguez (1918) 38 Phil. 759)

as best expressing the local rule regarding statutes void in part. Counsel for the defendants cite an earlier case (Barrameda v. Moir (1913) 25 Phil. 44). As the principle announced in the last cited case is the more comprehensive and is more fairer to the defendants, we give it preference. It was there announced:

> "Where part of a statute is void as repugnant to the Organic Law, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. But in order to do this, the valid portion must be so far independent of the invalid portion that it is fair to presume that the Legislature would have enacted it by itself if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. The void provisions must be eliminated without causing results affecting the main purpose of the Act in a manner contrary to the intention of the Legislature. The language used in the invalid part of a statute can have no legal force or efficacy or any purpose whatever, and, what remains must express the legislative will independently of the void part, since the court has no power to legislate."

Omitting reference to the President of the Senate and the Speaker of the House of Representatives in section 4 of Act 2705, as amended by section 2 of Act 2822, it would then read: "The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General." Would the Court be justified in so enforcing the law without itself intruding on the legislative field?

The Philippine Legislature, as we have seen, is authorized to create corporations and offices. The Legislature has lawfully provided for a National Coal Company and a committee to vote the government stock in that company, but has unlawfully provided for two of its members to sit in the committee. Would this Court be doing violence to the legislative will if the voting power be continued solely in the hands of the Governor-General until different action is taken by the Legislature? We conclude that we would not, for the reason that the primordial purpose of the Legislature was "to promote the business of developing coal deposits * * * * and of mining * * * and selling the coal contained in said deposits." (Act 2705, sec. 2, Act 2822, sec. 1.) The incidental purpose of the Legislature was to provide

a method to vote the stock owned by the Government in the National Company. In the words of the United States Supreme Court, "The striking out is not necessarily by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there." (Railroad Companies v. Schutte (1880) 103 U. S. 118; State v. Westerfield (1897) 23 Nev. 468; State v. Washburn *supra;* State v. Wright (1913) 251 Mo. 325; State v. Clausen (1919) 107 Wash. 667; 1 Lewis Sutherland, Statutory Construction, Second Ed. Ch. IX.)

The decision of the United States Supreme Court in Clayton v. People (1890, 132 U. S. 632) is particularly applicable on account of relating to the validity of an Act passed by a territorial legislature, the question of partial invalidity, and the contention likewise here made, that since the law in question had been on the statute books for a number of years, it must be considered as having been impliedly ratified by the Congress. An Act of the Legislature of Utah of 1878 had declared that the auditor and the treasurer shall be elected by the voters of the territory. In a decision handed down in 1886, the Supreme Court of the Territory of Utah

held the Act void because in conflict with the organic act creating the territory, which provided that the governor, with the consent of the legislative council, shall appoint such officers. It further held that a territorial statute invalid when enacted is not validated by the failure of the Congress expressly to disapprove it. (People v. Clayton, 4 Utah 421.) The United States Supreme Court on appeal affirmed the judgment. It said:

> "It can hardly be admitted as a general proposition that under the power of Congress reserved in the Organic Acts of the Territories to annul the Acts of their Legislatures the absence of any action by Congress is to be construed to be a recognition of the power of the Legislature to pass laws in conflict with the Act of Congress under which they were created. * * * * We do not think that the acquiescence of the people, or of the Legislature of Utah, or of any of its officers, in the mode of appointing the auditor of public accounts, is sufficient to do away with the clear requirements of the Organic Act on that subject. It is also, we think, very clear that only that part of the Statute of Utah which is contrary to the Organic Act, namely, that relating to the mode of appointment of the officer, is invalid; that so much of it as creates the office of the auditor of public accounts and

> treasurer of the Territory is valid; and that it can successfully and appropriately be carried into effect by an appointment made by the governor and the Council of the Territory, as required in the Act of Congress."

On the assumption, however, that the entire provision authorizing the voting committee be considered as wiped out, yet we think it would still devolve on the Governor-General to protect the public interests and public property. He is made responsible for the execution of the laws, and he would be unfaithful to that trust if, through inaction, instrumentalities of government should fail to function and government property should be permitted to be dissipated.

Counsel for the defendants have injected the argument into the discussion that, as the President of the Senate and the Speaker of the House of Representatives are at least *de facto* officers, their right to act as members of the voting committee cannot be collaterally attacked, and that the defendants in this suit are the *de jure* members of the board of directors of the National Coal Company. Contentions such as these are out of harmony with the avowed purpose to avoid technical obstruction, and to secure a definite expression of opinion on the main issue. However, it remains to be said that this is a direct proceeding to test the right of the defendants to the

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS
IN BANC

Justices Present:

Avanceña, C. J.
Johnson, Street,
Malcolm, Villamor,
Ostrand, Johns,
Romualdez, and
Villa-Real, JJ.

GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff and Petitioner,* *vs.* MILTON E. SPRINGER, DALMACIO COSTAS and ANSELMO HILARIO, *Defendants and Respondents.*	R. G. No. 26979 Submited 11th day of Jan., 1927. Promulgated 1st day of Apr., 1927.

x x

DECISION

JOHNSON, J., concurring:

Under the admitted facts the writ of quo warranto prayed for should be granted. Milton E.

Springer, Dalmacio Costas and Anselmo Hilario are unlawfully and illegally holding and exercising the position of members of the Board of Directors of the National Coal Company and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be inducted into said position to take charge thereof and to perform the duties incumbent upon them as members of said Board of Directors.

The principal questions involved in this action are:

(a) May the Legislative Department of the Government of the Philippine Islands adopt a law and provide that some of its members shall take part in its execution?

(b) Was the Governor-General of the Philippine Islands authorized, under the law, to promulgate General Order No. 37? and

(c) Were the respondents legally elected as members of the Board of Directors of the National Coal Company?

Inasmuch as these questions involve respective powers of two great departments of the Government, they should be seriously considered by this Court and not to be lightly resolved on.

These questions were presented to the Supreme Court of the Philippine Islands for solution in an original action, praying for the issuance of the extraordinary legal writ of quo warranto. In relation with the questions involved, the specific and definite purpose of the action is (a) to inquire into the right of the respondents, Milton E. Springer, Dalmacio Costas and Anselmo Hilario to act as members of the Board of Directors of the National Coal Company, a private corporation created by special charter by an Act of the Philippine Legislature, and (b) to have inducted into office, in their place and stead, said Romarico Agcaoili, H. L. Heath and Salvador Lagdameo.

To the petition presented by the Government of the Philippine Islands (ex rel. Romarico Agcaoili, H. L. Heath and Salvador Lagdameo) the respondents demurred. The facts are therefore admitted. A question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts upon which the petition is based are few, clear, and well defined. There is no dispute upon the facts. They are briefly: That the National Coal Company is a private corporation created by Act 2705 (Vol. 12, Public Laws, p. 216, March 10, 1917) as amended by Act 2822 (Vol. 14, Public Laws, p. 202, March 5, 1919). Act 2705, as amended by Act 2822, constitutes the charter of said Company. Said Acts are not public laws. They are private Acts of the Philippine Legislature. They provide that said Company shall be subject to the provisions of the Corporation Law (Act 1459) in so far as they are not inconsistent with the provisions of said charter, and shall have the general powers mentioned in said Act (Act 1459) and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and mining, extracting, transporting and selling the coal contained in said deposits. Said charter provided that the capital of said Company shall be ₱3,000,000.00, divided into 30,000 shares of stock with a par value of ₱100.00 per share.

Said charter further provided that the Governor-General, on behalf of the Government of the Philippine Islands, shall subscribe for fifty-one per centum (51%) of said capital stock, and that the "voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the *Governor-General, the President of the Senate and the Speaker of the House of Representatives.*" At the time of the adoption of said charter the Philippine Legislature appropriated the sum of ₱1,530,000.00 for investment in the stock of said Company to be acquired by the Government of the Philippine Islands.

The National Coal Company was organized in accordance with the provisions of its charter. A Board of Directors was elected from time to time. Its business was carried on by said Board of Directors. Finally a legal question arose concerning the right of the President of the Senate and the Speaker of the House of Representatives to act with the Governor-General in voting the stock of said Company. That question was referred to the Judge Advocate General of the United States Army as well as to the Attorney-General of the United States. Upon full consideration of the question, the Judge

Advocate General and the Attorney-General reached the conclusion that the President of the Senate and the Speaker of the House of Representatives were without authority in law to take part in the voting of the stock owned by the Government, for the reason that the particular provision of the charter granting or creating said power was illegal and void, and that the participation of the President of the Senate and the Speaker of the House of Representatives in voting said stock was an illegal encroachment upon the powers of the Executive Department of the Government. Upon receiving said opinions the Governor-General, evidently for the purpose of avoiding criticism that he was permitting an illegal and void law to be enforced and, if possible, impeachment proceedings for a failure or refusal on his part to comply with the law of the land, issued an executive order, known as Executive Order No. 37. Executive Order No. 37 provides:

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed

by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act.

Notice of said Executive Order was duly and timely given by the Governor-General to the President of the Senate and the Speaker of the House of Representatives. The Governor-General further notified the President and the Speaker that "he would thereafter exercise exclusively the duties and

powers" with respect to the voting of the stock held by the Government of the Philippine Islands in the National Coal Company.

At the time of the issuance of said Executive Order No. 37 or thereabouts the Government of the Philippine Islands was the registered owner of about 29,975 shares out of the total of 30,000 shares of said Company. The President of the Senate and the Speaker of the House of Representatives protested against the alleged assumed authority on the part of the Governor-General to vote said government stock and insisted upon their right to participate in the voting of the same.

Later, and without going into great detail, a meeting of the stockholders was called for the purpose of electing members of the Board of Directors of said Company. In accordance with the pre-announced intention, the President of the Senate and the Speaker of the House of Representatives attended the meeting of the stockholders of the Company and then and there asserted their right, as a majority of the "Voting Committee", to vote the stock of the Government. Against the objection and protest of the Governor-General they were per-

mitted by the Chairman of the meeting to vote all of the stock held by the Government of the Philippine Islands. They deposited a ballot purporting to be signed by them on behalf of the said "Voting Commitee" for the election as Directors of Alberto Barretto, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas and Anselmo Hilario. Notwithstanding the objection and protest of the Governor-General to the acceptance of said ballot, the Chairman permitted it to be deposited in favor of the persons for whom it was cast. At the same meeting of the stockholders and at the same time the Governor-General, insisting upon his sole right to vote the stock owned by the Government of the Philippine Islands, cast his ballot representing all of the stock of the Government, in favor of Alberto Barretto, Frank B. Ingersoll, Romarico Agcaoili, H. L. Heath and Salvador Lagdameo, which ballot was rejected by the Chairman and the same was not allowed to be deposited.

Against the ruling of the Chairman, permitting the ballot of the President of the Senate and the Speaker of the House of Representatives to be deposited on behalf of the said "Voting Committee"

a protest of the Governor-General was duly and timely presented. Notwithstanding said protest on the part of the Governor-General, that the President of the Senate and the Speaker of the House of Representatives had no authority to vote the stock of the Government nor to participate in the voting of the same, the Chairman declared that Alberto Barrette, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas and Anselmo Hilario had each received a majority of the votes cast and that said persons had been duly elected as members of the Board of Directors of the National Coal Company.

It will be noted that both the Governor-General, and the President of the Senate and Speaker of the House of Representatives voted for the election of Alberto Barretto and Frank B. Ingersoll. There is no objection in this record to the right of said persons to act as members of the Board of Directors. The contention of the Government is, that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo had been duly and legally elected as members of the Board of Directors by the vote of the Governor-General, and that Milton E. Springer, Dalmacio Costas and Anselmo Hilario had not been duly and

legally elected as members of the Board of Directors by the vote of the President of the Senate and the Speaker of the House of Representatives, and that they should be ousted and altogether excluded from their office.

Considering the foregoing facts we have the question squarely presented, whether the persons elected by the Governor-General in voting the stock owned by the Government had been duly and legally elected Directors of said Company, or whether the persons elected by the President of the Senate and the Speaker of the House of Representatives were legally elected as such Directors.

It can scarcely be contended that the President of the Senate and the Speaker of the House of Representatives, when the Governor-General is present at a meeting of the stockholders of said Company, have a right to vote *all* of the stock of said Company, to the entire exclusion of the Governor-General. There is nothing in the law which indicates the manner in which the stock owned by the Government of the Philippine Islands may be voted when a difference of opinion exists among the members of the "Voting Committtee" as to how the same shall be voted.

Without discussing the method of voting the stock when there is a difference of opinion in the "Voting Committee' as to how it shall be voted we pass to the question, whether or not the President of the Senate and the Speaker of the House of Representatives, as members of the Legislative Department of the Government, have any right whatever to participate in the voting of the stock belonging to the Government of the Philippine Islands.

THE RIGHT OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT TO EXECUTE OR TO ASSIST IN THE EXECUTION OF ITS LAWS

The Legislative Department of the Government adopted the law creating the charter of the National Coal Company. The Legislative Department of the Government provided a method, in said charter, by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of said law.

It has been stated so frequently by eminent statesmen and jurists, that it scarcely needs the citation of authorities to support the doctrine, that

wherever the American flag flies as an emblem of Government, the powers of that Government are divided into three distinct and separate departments —Executive, Legislative and Judicial—each acting in its own field, under its own authority and general powers of the government. While the line of demarcation, by division, is easily discerned, it is at times difficult to follow in actual cases. There is a constant overlapping of the different departments of the government which cannot be avoided, and yet such overlapping generally results in the greater stability and permanency of the government. It is also a statement, based upon political science, that scarcely needs repetition, that one department overreaches its powers whenever it steps across the line of demarcation and attempt to function within the field of another department of government under the American flag. Under the form of government established in the Philippine Islands, one department of the government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department. It is the general duty of the legislative branch of the government to make such laws and regulations as will effectually conserve the peace

and good order and protect the lives and the property of the citizens of the state. It is the duty of the Governor-General to take such steps as he deems wise and necessary for the purpose of enforcing such laws. Every delay and hindrance and obstacle which prevents a strict enforcement of laws necessarily tends to jeopardize public interest and the safety of the whole people.

Barcelon vs. Baker, 5 P. R. 87.

The different departments of the government are co-ordinate, coequal and each functions independently, uncontrolled and uncontrollable by the other. To that statement, however, there exist exceptions. For example, the executive department of the government may annul and set aside acts of the legislative department of the government under its power of veto. So may the legislative department of the government annul and set aside actions of the executive department of the government by repealing or amending laws. So likewise the judicial department of the government may annul and set aside acts of the legislative department of the government when such acts are contrary to the fundamental laws of the state or beyond the powers

of the legislative department. But in every case, where one department, as above indicated, to any extent attempts to control the effects of acts of the other department or departments, it is acting under its own powers and within its own department.

The Constitution of the United States as well as the Constitution of each of the states of the Union provide that the government shall be divided into three departments: executive, legislative and judicial. George Washington, who was the President of the Constitutional Convention which adopted the United States Constitution, in a letter written to his friend Lafayette in 1788, referring to the complete separation of the powers of the government, said: "These powers are so distributed among the legislative, executive and judicial branches, in which the powers of the government are arranged that it can never be in danger of degenerating into a monarchy, an oligarchy, an aristocracy, or any other despotic form of government as long as there shall remain any virtue in the body of the people."

Mr. Thomas Jefferson, who has been quoted on questions relating to the meaning, force and application of the provisions of the Constitution of the

United States perhaps more than any other one person, said: "The great principle established by the Constitution of the United States which was never before fully established, was the separation of the delegated powers into the hands of the executive, the legislative department and the judiciary. This is our system of check and balances which makes ours a 'government of laws and not of men'." On another occasion Mr. Thomas Jefferson said, in discussing the necessity of limiting the power of government: "When it comes to a question of power —trust no man, bind him down from mischief, by the strong chains of the Constitution."

By the well known distribution of the powers of government among the executive, legislative and judicial departments by the constitution, there was provided that marvelous scheme of check and balances which has been the wonder and admiration of the statesmen, diplomats and jurists in every part of the civilized world.

The balance of the powers of Government provided for in the constitution as well as in the charter of the Philippine Government was not the result of chance. The various parts did not fall into

place merely through the vicissitudes of circumstance. They were devised by careful foresight; each in a measure dependent upon the others and not possessed of so much independence as to give freedom and courage in the exercise of their functions. Each was to move within its respective spheres as the bodies of the celestial system march along the pathways of the heaven. It is a fundamental rule of constitutional law that no department of government has power to perform nor to assist in performing the functions of another.

The executive department is limited to the execution of *valid* laws adopted by the legislative department of the government. The legislative department is limited to the enactment of laws and to the investigation of facts necessary for wise legislation. The judicial department of the government is limited to the administration of justice and the interpretation of laws. In case of differences between the executive and legislative departments as to their respective powers, it has long since been conceded that the Supreme Court shall act as an umpire.

Marbury vs. Madison (1803)	1 Cranch (U.S.)	137
Rice vs. Austin	19 Minn.	103
Luther vs. Borden	7 Howard (U. S.)	44
Martin vs. Hott	12 Wheat. (U.S.)	29

No government, past or present, has more carefully and watchfully guarded and protected by law the individual rights of life and property of its citizens than the governments under the American flag. Each of the three departments of the government has had separate and distinct functions to perform in this great labor. The history of the United States, covering nearly a century and a half, discloses the fact that each department has performed its part well. No one department of the government can or ever has claimed, within its discretionary power, a greater zeal than the other in its desire to promote the welfare of the individual citizens, entities or corporations. They are all joined together in their respective spheres, harmoniously working to maintain good government, peace and order, to the end that the rights of each citizen be equally protected. No one department can claim that it has a monopoly of these benign

purposes of the government. Each department has an exclusive field within which it can perform its part within certain legal and discretionary limits. No other department can claim a right to enter these legal and descretionary limits and assume to act there. No presumption of an abuse of these legal and discretionary powers by one department will be considered or entertained by another. Generally such conduct on the part of one department, instead of tending to conserve the highest interest of the government and its citizens and the rights of the people, would directly tend to destroy the confience of the people in the government and to undermine the very foundations of the government itself.

Barcelon vs. Baker, 5 P. R. 87, 115
Forbes et al. vs. Crossfield, 16 P. R. 534

The Government of the Philippine Islands, like the Government of the United States, is based upon the fundamental principle of the separation of the executive, legislative and judicial powers. Subject only to the exceptions especially established by the organic act, neither of the great departments of the government may validly exercise any

of the powers conferred upon either of the others. In the case of Abueva vs. Wood (45 P. R. 612) it was said: "The duties of each department are well defined and limited to certain fields of governmental operation." Each department exercises functions as independent of each other as the Federal or state governments of the Union. It was not intended by the framers of the theory of our government that the duties which had been assigned to the executive should be performed by the legislative, nor that the duties which had been assigned to each of them should be performed and directed by the judicial department.

Sinking Fund Cases,	99 U. S. 700, 718
Clough vs. Curtis,	134 U. S. 361
Abueva vs. Wood,	45 P. R. 612

No well organized government or business even can be well managed if one department can enter upon the field of another and attempt to administer or interfere in the administration of the other.

Abueva vs. Wood, supra	
Barcelon vs. Baker,	5 P. R. 87
U. S. vs. Bull,	15 P. R. 7, 27

In the case of Kilbourn vs. Thompson, 103 U. S. 164), it was said: "It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department and no other."

Section 17 of the Administrative Code of 1917 (Act 2711) provides; "The executive, legislative, and judicial powers of the Philippine Government are distributed, respectively, among the executive, legislative, and judicial branches, severally exercising the functions and powers conferred on them by law."

Each department of the government has an exclusive field within which it can perform its part within certain discretionary limits. No other department can claim a right to enter these discretionary limits and assume to act there.

Barcelon vs. Baker, supra
U. S. vs. Bull, supra

Forbes vs. Tiaco,	16 P. R. 534
Borromeo vs. Mariano,	41 P. R. 322
Severino vs. G. G.,	16 P. R. 366
Tarlac vs. Gale,	26 P. R. 338

In the case of United States v. Ang Tang Ho (43 P. R. 1) this Court said that the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law. Subject to the constitution only, the power of each branch is supreme within its own jurisdiction, and it is for the judiciary only to say when an act of the legislature is or is not constitutional. It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law.

Alejandrino vs. Quezon, 46 P. R. 83, 96.

It is not within the power of the Philippine Legislature to enact laws which either expressly or impliedly diminish the authority conferred by an Act of Congress on the Chief Executive.

Concepcion vs. Paredes, 42 P. R. 599

From all of the foregoing, the conclusion is inevitable, that if any given act of the Philippine Legislature does not, by its nature, pertain to the law-making function, but is either executive or judicial in character, and does not fall within any of the express exceptions established by the Organic Act, such an act is *ultra vires* and therefore null and void. (See, for a discussion of the powers of the executive department of the Government, the opinion by the late Chief Justice Cayetano S. Arellano in the case of In re Patterson, 1 P. R. 93.)

POWERS OF THE LEGISLATIVE DEPARTMENT OF GOVERNMENTS UNDER THE AMERICAN FLAG

Some one has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers. The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which they cannot leap.

Mr. Justice Cooley, one of the greatest expounders of constitutional law, said: "The legislative power, we understand, to be the authority, under the constitution, to make laws and to alter and repeal them."

Mr. Biddel, an eminent lawyer, said: "The legislature has no other duty nor power than to make laws. After a law has been enacted, that department has no further power over the subject except to amend or repeal it. It can neither adjudge the law nor execute it. All power of that department is ended."

Mr. James Wilson, who was a member of the convention which adopted the Constitution of the United States, and later one of the first members of the Supreme Court of the United States, and one of the very ablest of the members of that great body, in discussing the question of the powers of the legislative department of the government, said, quoting from an able English statesman: "England can never be ruined but by a Parliament (legislative department), which demonstrates the danger of allowing to the legislative department any other (power) than strictly legislative powers."

Even the Justices of the Supreme Court joined in a letter addressed to President Washington upon the general subject of the separation of the departments of government, and insisted upon a scrupulous and undeviated maintenance of the separation of the departments.

Mr. Thomas Jefferson, James Madison and Alexander Hamilton, who were among the great expounders of the Constitution, wrote earnestly upon the question of the separation of the departments of government, and, with many others, united in protesting against tolerating the claim of the legislative department to exercise any other than purely legislative power.

It has been said in many of the leading cases decided by the highest courts of record that "the power of the legislature is the power to legislate *only* and to make such investigations as are necessary for that purpose."

Under a constitutional form of government it is believed that all will agree that the concentration of power in the legislative department of government or in any *one* of the other departments will inevitably result in despotism.

Mr. Bryce, who for many years was a close student of the system of government under the American flag, said: "A legislature is a legislature and nothing more." Mr. Woodrow Wilson, in discussing the powers of the executive and legislative departments of government, said: "The power of the legislative department is to *enact* laws, while it is the duty of the President to see that the laws of Congress are faithfully executed."

A careful reading of the debates, in the Constitutional Convention, by the greatest statesmen and diplomats at that time shows clearly that one of their greatest concerns was the limitation upon the powers of the executive and legislative departments. A reading of the Constitution itself adopted after a long discussion shows clearly that its members intended to expressly limit the powers of said departments. In the enumeration of the powers of the three departments the phrase that each "shall" or "shall not" do a particular thing is frequently found. No general unlimited power is found. Experience had shown that there was need of curbing the legislative body in order to prevent a violation of the citizens' right of liberty and prop-

erty. The members of the Constitutional Convention made an effort to strike at the very root of the evils which the people of the state had suffered by the madness of a sovereign legislative body.

James Madison, a member of the Convention and later President of the United States, said: "Experience had proved a tendency in our governments (state governments) to throw all power into the legislative vortex. The Executives of the States are, in general, little more than ciphers; the legislature, omnipotent. If no effectual check be devised in restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable."

Gouvernour Morris, one of the great statesmen of his time, said that "he concurred in thinking the public liberty in greater danger from legislative usurpation than from any other source." (July 21, 1787.)

James Madison, in September, 1787, in speaking of the encroachments of the legislative department, said: "The experience of the states had demonstrated that their checks are insufficient. *The legislative department is everywhere extending the*

spheres of its activity and draining all power into its impetuous vortex. I have appealed to experience for the truth of what I advance on this subject."

Mr. James Wilson, a member of the Constitutional Convention and one of the first members of the Supreme Court of the United States, said on the 16th day of June, 1787: "If the legislative authority be not restrained there can be neither liberty nor stability."

The great statesmen who were among the members of the Constitutional Convention were as solicitous about the limitations of the executive department of the government, as they were concerning the limitations of the legislative department. They were exceedingly cautious in defining the powers of each of said departments, and so far as their knowledge and experience aided them their work was complete.

POWERS OF THE PHILIPPINE LEGISLATURE, GRANTED BY THE PHILIPPINE CHARTER

Turning to the Act of Congress of August 29, 1916, commonly known as the "Jones Law," for the

purpose of ascertaining what power or authority to legislate was granted to the Philippine Legislature, we find that, while the Legislature was given "general legislative power" (sections 7, 8, 12), "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which reserves the power and authority to annul the same." Not only must all laws enacted by the Philippine Legislature be reported to Congress for approval, but certain laws, in addition to the requirement that they must be submitted to Congress, must be submitted to the President of the United States for approval (sections 9, 10 and 19). In other words, no act of the Philippine Legislature can have the force and effect of a law until it has been either expressly or tacitly approved either by the Congress of the United States or by the President. Neither will it be contended that the express or tacit approval by the Congress of the United States or by the President, of a law otherwise illegal and void, will render such law valid if, in fact, is was adopted without power or authority.

THE AUTHORITY OF THE PHILIPPINE LEGISLATURE TO ENACT LAWS IS WHOLLY A DELEGATED AUTHORITY

The only legislative authority possessed by the Philippine Legislature is a delegated authority. The only power or authority to legislate is granted by the Congress of the United States by the charter (Jones Law; Act of July 2, 1902). To ascertain the power of the Philippine Legislature, therefore, an examination of its charter must be made.

It is argued that when either the President or the Congress of the United States gives express or tacit approval to an Act of the Philippine Legislature, that such an Act thereby becomes a valid subsisting law. That argument is tenable, except when such act is beyond the powers granted to the Legislature. The approval by the President or Congress of an act of the Philippine Legislature does not render such an act legal if, in fact, the same is beyond the powers of the Legislature or contrary to the fundamental law of the land. If the provisions of the act extend beyond the powers of the Legislature, then certainly it cannot be contended that the same is a valid and legal act even though the same has been expressly or tacitly ap-

proved by the President or Congress, unless the same can be considered ar act of the Congress of the United States and then only, when the same is within the power and authority of Congress. Such act of the Philippine Legislature, even with such approval, can be no more valid and legal than if the Congress of the United States itself had adopted a law which was beyond its power. The legality of such act, notwithstanding the approval, may be decided in a proper proceeding for the purpose of determining whether its provisions are beyond the powers of the legislative department of the government.

The general legislative powers granted to the Philippine Legislature are found in sections 6, 7, 8 and 12 of the Act of August 29, 1916, and those provisions of the Act of July 2, 1902, which have not been repealed. Section 6 provides that the laws now in force in the Philippines shall continue in force, except as altered, amended or modified herein, until altered, amended or repealed by the legislative authority herein provided by the Act of Congress.

Section 7 provides that the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment, to amend, alter, modify or repeal any law, civil or criminal, continued in force by this act, as it may from time to time see fit.

Section 8 provides that general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this act. Section 12, among other things, provides that general legislative power in the Philippines, except as herein otherwise provided, shall be vested in the Legislature, which shall consist of two houses, one the Senate and the other, the House of Reperesentatives, and the two houses shall be designated "the Philippine Legislature."

From a reading of said sections 6, 7, 8 and 12 we have some difficulty in determining why it was necessary to repeat practically the same idea concerning the legislative authority in said sections. The provisions of sections 6, 7 and 12 add nothing to the provisions of section 8 which granted general legislative power to the Philippine Legislature.

We have read said Act of Congress of August 29, 1919, in vain, to find the slightest reference to the power of the Philippine Legislature to participate in the slightest degree, by legislation or otherwise, in the execution of its laws even after they have been approved expressly or tacitly by the President or Congress, unless such power is found in that provision of the law, and then only in the Philippine Senate, which gives that branch of the Legislature the right to participate, with its advice and consent, in the appointment of certain officers of the Government. But even that provision can scarcely be construed to mean that the Senate can participate in the execution of the laws.

THE ONLY SOVEREIGN IN THE PHILIPPINE ISLANDS IS THE SOVEREIGNTY OF THE UNITED STATES

The people of the Philippine Islands exercise in all matters of government a delegated authority. The executive, the legislative and the judicial departments of the Government are merely exercising a delegated authority. These departments, unlike the departments of Government in the United States under the Constitution, have received no authority from the people of the Philippine Islands. In the

absence of Congressional authority, these departments have no authority or power. They are each creatures of the Congress of the United States. Like all agents, they must act within the authority given. The title of acts of the Philippine Legislature, by which it assumes to enact laws "by its own authority" is an assumption of authority not possessed in fact nor in law. It acts by authority of the Congress of the United States and in the enactment of laws that authority should be recognized.

RIGHT OF PHILIPPINE LEGISLATURE TO APPOINT COMMITTEES TO MAKE INVESTIGATIONS IN ORDER TO ENACT WISE LEGISLATION

In addition to the power to *enact* laws, the Philippine Legislature has the inherent power on its own account, or through committees appointed by it, to inquire into the general condition of the government, the administration of governmental affairs and the general welfare of the people, to obtain information to aid it in adopting wise legislation. When such investigation is terminated and laws are adopted, then the authority of the legislature is ended and the execution of such laws is turned over to the Executive Department of the Government.

THE POWER AND AUTHORITY OF THE EXECUTIVE UNDER THE CHARTER OF THE PHILIPPINE GOVERNMENT

From a further examination of the Act of Congress of August 29, 1916, in relation with the Act of Congress of July 2, 1902, we find a depository of power and authority created for the express purpose of executing the laws of the Philippines. Section 21 of said Act (August 29, 1916) provides "that the supreme executive power shall be vested in an executive officer whose official title shall be the Governor-General of the Philippine Islands." It occurs to us that when the Congress of the United States used the words "supreme executive power" that the phrase was used after a careful consideration of its meaning. It was not a haphazard use of the term. The use of that phrase was carefully considered by the Congress of the United States when the Jones Bill was under consideration. In addition to the enumerated powers conferred upon the "supreme executive power," we find that he is held responsible for the faithful execution of the laws of the Philippine Islands. The language of section 22 is "he shall be responsible for the faithful execution of the laws of the Philippine Islands."

There is nothing in any of the provisions of the Jones Law which authorizes or permits the "supreme executive power" to divide its responsibility for the faithful execution of the laws of the Philippine Islands with any other department, legislative or judicial, or with any of the bureaus of the Government. All executive functions of the Philippine Government are expressly under the direction and control of the Governor-General.

Outside of the provisions for the internal regulation and control of the affairs of the legislature, its rules and regulations in its relation with the confirmation of certain appointees by the Governor-General, there is not a syllable, a word, a phrase, a line, nor a paragraph in the Jones Law which permits the legislature to participate in the execution of its general or special laws.

It is a fundamental maxim of political science, recognized and carried into effect in the Federal Constitution and the constitutions of all of the states of the Union, that good government and the protection of rights require that the legislative, executive and the judicial powers should not be confided to the same person or body, but should be apportioned

to separate and mutually independent departments of the government. (Black's Constitutional Law, p. 83.)

The idea of an apportionment of the powers of government, and of their separation into three co-ordinate departments is not a modern invention of political science. It was suggested by Aristotle in his treatise on "Politics", and was not unfamiliar to the more advanced of the medieval jurists. But the importance of this division of powers, with the principle of classification, were never fully apprehended, in theory, until Montesquieu gave to the world his great work "Spirit of the Laws". Since then his analysis of the various powers of the state has formed part of the accepted political doctrine of the civilized world.

All American constitutions, state and Federal, provide for the separation of the three great powers of government, and their apportionment to distinct and independent departments of government.

The principle of the separation of the three departments of the government imposes upon each the limitation that it must not usurp the powers nor encroach upon the jurisdiction of either of the others.

The people of the United States ordained in their constitution that "*all* legislative powers herein granted shall be vested in a Congress of the United States." The people also declared that "the executive power shall be vested in a President" and that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." It is made clear therefore that the power to legislate is given to the Congress and that the President and the courts are prohibited from making laws. The legislature cannot lawfully usurp any of the functions granted by the Constitution to the executive department. The true meaning of the constitutional division of governmental powers is simply that the whole power of one of the three departments of government shall not be exercised by the same hand which possesses the whole power of either of the other departments.

Mr. Baker, who was Secretary of War of the United States at the time the Jones Law was adopted, and who perhaps was more familiar with its meaning and purpose than any other one person, wrote a letter to Governor-General Harrison, in which he said in general terms that "it would seem to be the

part of wisdom for the President and the Governor-General to admit of no encroachment on those powers placed in their hands."

Energy and constancy in the executive department of the government is a leading element in the definition of good government. They are essential to the protection of the people of the state against foreign attack; they are not less essential to the steady administration of the law; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice and administration of the law; to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy. A feeble executive in the administration of his department implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Delay in the administration of the laws will lead to injustice, dissensions, turmoils and disorder.

While the legislature has authority to adopt laws and the courts are possessed with power to construe them, yet finally in its largest sense, the

administration of a government and the execution of the laws so adopted and construed is finally left in the hands of the executive department of the government.

FORMS OF GOVERNMENT WHICH HAVE EXISTED IN THE PHILIPPINE ISLANDS SINCE AMERICAN OCCUPATION

Since the 13th day of August, 1898, there have existed in the Philippines several distinct forms of Government.

First.—A Military Government. From the 13th day of August, 1898, until the 1st day of September, 1900, there existed a Military Government in the Philippine Islands under the authority of the President of the United States. That Government exercised all of the powers of government, including executive, legislative and judicial.

Second—Divided Military and Civil Government. From the 1st day of September, 1900, to July 4, 1901, the legislative department of the Government was transferred from the Military Governor to the United States Philippine Commission, to be thereafter exercised by said Commission in the

place and stead of the Military Government, under such rules and regulations as the Secretary of War might prescribe, until the establishment of the Civil Central Government for the Islands, or until Congress should otherwise provide. During that period the executive authority was vested in the Military Governor while the legislative authority was vested in the Philippine Commission. (See Instructions of the President of the United States to the United States Philippine Commission, April 7, 1900.) On the 4th day of July, 1901, the executive power theretofore possessed by the Military Governor was transferred to the President of the United States Philippine Commission.

Third—Civil Government. From the 4th day of July, 1901, to the 16th day of October, 1907, the executive and legislative powers of the Philippine Government were possessed by the United States Philippine Commission. The President of the Commission not only possessed and exercised the executive power of the Government but sat as a member of the United States Philippine Commission as a member of the legislative department of the Government.

Fourth—Legislative Department of the Government Divided into Two Branches. On the 16th day of October, 1907, the Legislative Department of the Government was divided into two branches—the United States Philippine Commission, and the Philippine Assembly—which form continued up to the 16th day of October, 1916. The Governor-General during that period not only possessed the executive powers of the Government, but acted as a member of the branch of the legislative department, known as the United States Philippine Commission.

Fifth—Legislative Department of the Government Separated from the Executive Department. From the 16th day of October, 1916, until the present time, by virtue of the provisions of the Jones Law, the executive and legislative departments of the Government have been separated, each constituting a separate and distinct department of government; the first, represented by the Governor-General and the second, by the Philippine Legislature.

In each of the separate forms of government above mentioned there existed the executive, legislative and judicial powers fully established and recognized by the only authority for the existence of said Government,—the Government of the United States.

DUTY OF THE GOVERNOR-GENERAL OF THE PHILIPINES WHEN ADVISED OF ILLEGALITY OF A LAW—HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURT CONCERNING ITS LEGALITY

It is the sworn duty of the Governor-General of the Philippines to execute the laws. That duty, however, does not require him to execute an illegal act of the Legislature. When he is advised by his legal department that a certain act, or any part thereof, of the Legislature is illegal and void, he may do one of two things: (a) he may disregard it and refuse to execute it, or (b) he may formulate an issue upon the alleged illegality and have that question presented to the courts for solution. He is acting within his powers whichever of these courses he selects to take. To disregard an illegal and void act of the Legislature is neither tyranny nor a violation of his sworn duty. It would be a violation of his sworn duty to enforce or permit the enforcement of an illegal act.

RIGHT OF DIFFERENT DEPARTMENTS TO CONSTRUE POWERS GRANTED UNDER THE CONSTITUTION OR CHARTER

While in many jurisdictions a provision exists by virtue of which the executive and legislative de-

partments may, in case of doubt as to their powers, refer the question to the courts for decision, no such provision exists in the Philippines. In the absence of such provision it becomes necessary therefore in the first instance, when a duty is to be performed, for said departments to pass upon the question of their power to act. Every department of government invested with constitutional or charter powers must, in many instances, be the judge of their powers, or they could not act. Such interpretation of their powers is not exclusive. The parties aggrieved may resort to the courts for a judicial interpretation.

Cooley's Constitutional Limitations, 73.

EXCLUSIVE DUTY OF THE GOVERNOR-GENERAL TO PROTECT THE PROPERTY OF THE GOVERNMENT

It is the duty of the Governor-General, as the supreme executive power, to protect the property of the Government. If he, by negligence or inattention to that responsibility, permits the property of the Government to be wasted, destroyed or lost, he subjects himself to the danger of impeachment. His responsibility is then one of great seriousness. He

should not supinely disregard it. While the legislative department of the Government may adopt laws for safeguarding and protecting the property, public and private, it cannot intervene in the enforcement of such law. The legislative department would thereby be taking part, not only in the enactment of laws but in the execution of the same, which is not permitted under the American Constitution and system of laws.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO CRITERION AS TO REAL POWERS

In support of the contention that the President of the Senate and the Speaker of the House of Representatives, under Act 2705 as amended by Act 2822 have a right to intervene in the execution of said laws, our attention is called to many acts of legislative bodies, where such bodies have not only enacted laws but have made provisions in the same, by which they have intervened in their execution. The cited cases support the allegations of the respondents. Our attention is called especially to Acts Nos. 69, 1415, 1841, 1849, 1870, 1981, 2023, 2479, 2510, 2593, 2957 and 3208 as well as to many acts

of the legislatures of different states of th eUnion. It is true that in each of the various acts cited, of the Philippine Legislature, a provision is made for the appointment of certain persons to assist in their execution.

No question has ever been raised concerning the powers of the Legislature in respect of said acts. The mere fact, however, that the legality of said acts has never been questioned and their legality has been passed *sub silentio*, does not create a conclusive presumption that they were in fact adopted within the powers of the legislative department of the government. The fact that a statute has been accepted as valid and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where the question is properly raised and presented.

McGirr vs. Hamilton et al., 30 P. R. 563 and cases cited.

LEGALITY OF THAT PROVISION OF ACT 2705, AS AMENDED BY ACT 2822 CREATING THE "VOTING COMMITTEE"

In addition to the contention that the Legislature, by virtue of the provisions of Acts 2705 and

2822, not only attempted to legislate but to participate in the execution of its laws, there is still another objection to the legality of that provision of said acts which creates the "Voting Committee". One of the inhibitions against the power of the Philippine Legislature is found in one of the subparagraphs of section 3 of the Jones Law. Said subparagraph provides: "That no bill (public or private) which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." The title of Act 2705 reads: "An Act to Create the National Coal Company". The title of Act 2822 is: "An Act to Amend Certain Sections of Act 2705 Entitled 'An Act to Create the National Coal Company'." Act 2822 does not amend that provision of Act 2705 relating to the "Voting Committee". The inhibition, therefore, of the Jones Law need not be discussed with reference to the provisions of Act 2822.

Many of the states of the Union have adopted similar constitutional provisions. The purpose of this legislative restriction and the evils sought to be remedied thereby are clearly stated by Mr. Sutherland, now an Associate Justice of the Supreme Court

of the United States, in his valuable work on Statutory Construction. In section 111 he says that:

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill incongruous matters having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such *omnibus* bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for others purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have

approved; and not only were legislators thus misled, but the public also; so that legislative provisions were steadily pushed through in the closing hours of a session, which, having no merits to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been reasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures, by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title."

In the case of Walker vs. State (49 Ala., 329), the Supreme Court of Alabama stated the proposition as follows—citing and quoting from Cooley's Constitutional Limitations, p. 143:

"The object sought to be accomplished and the mischief proposed to be remedied by this provision are well known. Legislative assemblies, for the dispatch of business, often pass bills by their titles only without requiring them to be read. A specious title sometimes covers legislation which, if its real character had been disclosed, would not have command-

ed assent. To prevent surprise and fraud on the legislature is one of the purposes this provision was intended to accomplish. Before the adoption of this provison the title of a statute was often no indication of its subject or contents.

"An evil this constitutional requirement was intended to correct was the blending in one and the same statute of such things as were diverse in their nature, and were connected only to combine in favor of all the advocates of each, thus often securing the passage of several measures no one of which could have succeeded on its own merits. Mr. Cooley thus sums up in his review of the authorities defining the objects of this provision: 'It may therefore be assumed as settled that the purpose of this provision was: First, to prevent *hodge-podge* or log-rolling legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no information, and which might therefore be overlooked and carelessly and unintentionally adopted; and, *third*, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in or-

der that they may have opportunity of being heard thereon by petition or otherwise if they shall so desire.'

"The practice," says the Supreme Court of Missouri, "of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in their support members who were in favor of particular measures, but neither of which could command the requisite majority on its own merits, was found to be not a corruptive influence in the Legislature itself, but destructive of the best interests of the State. But this was not more detrimental than that other pernicious practice, by which, through dexterous and unscrupulous management, designing men inserted clauses in the bodies of bills, of the true meaning of which the titles gave no indication, and by skillful maneuvering urged them on to their passage. These things led to fraud and injury, and it was found necessary to apply a corrective in the shape of a constitutional provision."

City of St. Louis vs. Tiofel, 42 Mo., 590

The authorities are to all intents uniform that this constitutional requirement is *mandatory* and

not *directory*. Sutherland on Statutory Construction, section 112, states the rule correctly as follows:

"The efficiency of this constitutional remedy to cure the evil and mischief which has been pointed out, depends on judicial enforcement; on this constitutional injunction being regarded as *mandatory*, and compliance with it essential to the validity of legislation. The mischief existed notwithstanding the sworn official obligation of legislators; it might be expected to continue notwithstanding that that obligation is formulated and emphasized in this constitutional injunction if it be construed as addressed exclusively to them and only directory. It would in a general sense be a dangerous doctrine to announce that any of the provisions of the constitution may be obeyed or disregarded at the mere will or pleasure of the legislature unless it is clear beyond all question that such was the intention of the framers of that instrument. It would seem to be a lowering of the proper dignity of the fundamental law to say that it descends to prescribing rules of order in unessential matters whcih may be followed or disregarded at pleasure. The fact is this: That whatever constitutional provision can be looked upon as directory merely is very likely to be treated by

the legislature as if it was devoid of moral obligation, and to be therefore habitually disregarded."

In the case of Walker vs. State (49 Ala., 329) *supra*, the court said:

"It is the settled law of this court, founded on reasoning which seems to us unanswerable that this provision of the constitution is not a mere rule of legislative procedure, directory to the general assembly, but that it is mandatory, and it is the duty of courts to declare void any statute not conforming to it."

Justice Cooley, in his work on Constitutional Limitations (pp. 179-180) states that our courts have held, without exception, that such constitutional provision is *mandatory*.

Central Capiz vs. Ramirez, 40 P. R. 883

Inasmuch as the body of said Act contains a provision to which no reference is made in the title, in view of the well established authorities, we are forced to the conclusion that, that provision creating the "Voting Committee" is illegal. That illegality, however, is one which may be separated from the rest of the act without affecting the legality of the other provisions.

THE "VOTING COMMITTEE" AS PUBLIC OFFICERS OF THE GOVERNMENT

It is argued most earnestly by the petitioner, and denied with equal earnestness by the respondents, that the President of the Senate and the Speaker of the House of Representatives, acting as members of the "Voting Committee" in participating in voting the stock of the National Coal Company, were acting as *public officials* of the government and that the Legislature is without authority to appoint public officials for that purpose or to appoint public officials at all for any purpose. It is admitted by both parties that the National Coal Company is a private corporation. It is admitted that the Government of the Philippine Islands is a stockholder. The law provides that the Governor-General, the President of the Senate and the Speaker of the House of Representatives at a stockholders' meeting shall act as a committee for the purpose of voting said stock. Does that fact make the President of the Senate and the Speaker of the House of Representatives public officials? In the voting of the stock do they stand in any different relation to the Government and the National Coal Company than any other holders of stock? Are they not governed by

the same laws and by-laws of the corporation like other stockholders?

Mr. Justice Marshall, in the case of the Bank of the United States vs. Planters' Bank of Georgia (22 U. S. Rep., 904 (Feb. 18, 1824)), in discussing the question of the relation of the Government to private corporations when it becomes a stockholder in a private corporation, said, among other things: "It is, we think, a sound principle, that when a government becomes a partner in any trading company it divests itself, *so far as concerns the transactions of that company*, of its sovereign character, and takes that of a private citizen. Instead of communicating to the Company (or corporation) its privileges and its (sovereign) prerogatives, it descends to the level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted * * *. As a member of a corporation, a Government never exercises its sovereignty. It acts merely as a corporator and exercises no other powers in the management of the affairs of the corporation, than are expressly given by the incorporating act. The Government of the Union held shares in the Bank of the United States; but the

privileges of the Government were not imparted by that circumstance to the Bank. The state of Georgia by giving to the Bank the capacity to sue and be sued voluntarily strips itself of its sovereign character, so far as respects the transactions of the Bank, and waives all the privileges of that character."

The doctrine announced by Chief Justice Marshall in that case has been followed without modification not only by the courts but by all of the eminent authors who have written upon that particular question.

Thompson on Corporations, Vol. 1, sec. 167

Bank of Kentucky vs. Wister, 27 U. S. 318, 322

Briscoe vs. Bank of Kentucky, 36 U. S. 256, 324

Louisville Railway Co. vs. Letson, 43 U. S. 497, 550

Curran vs. State of Arkansas et al., 56 U. S. 309

Veazie Bank vs. Fenno, 75 U. S. 551

Railroad Co. vs. Commissioners, 103 U. S. 1, 4

Hopkins vs. Clamson College, 221 U. S. 636, 644

Putnam vs. Ruch et al., 56 Fed. Rep. 418

Western Union Tel. Co. vs. Henderson, 68 Fed Rep. 591

U. S. vs. Chesapeake & D. Canal Co., 206 Fed. Rep. 967

Encyclopedia of the U. S. Supreme Court Rep. Vol. 11, p. 225

Encyclopedia of the U. S. Supreme Court Rep. Vol. 3, p. 124

Encyclopedia of the U. S. Supreme Court Rep. Vol. 4, p. 643

The petitioner as well as the respondents cite many cases in support of their respective contentions. The petitioner cites the following cases:

Pratt vs. Breckinridge, 112 Ky. 1

State vs. Brill, 100 Minn. 499

State vs Denny, 118 Ind. p. . . (4 L. R. A. 79.)

State vs. Washburn, 167 Mo. 680

State vs. Stanley, 66 N. C. 59

Walker vs. Bledsoe, 68 N. C. 457

Howerton vs. State, 68 N. C. 546

Myers vs. United States, U. S. Advance Opinions 1926-1927, p. 27

Concepcion vs. Paredes, 42 P. R. 599

Cases Cited by Respondents:

The Smithsonian Institution

Mechem's Public Officers, Sec. 1

Olmstead vs. The Mayor, etc., 42 N. Y. Sup. Ct. 481

United States vs. Germaine, 99 U. S. 508

McArthur vs. Nelson, 81 Ky. 67

Congressional Reports, Vol. II

State vs. Kennon, 7 Ohio State 562

See also:

Walker vs. City of Cincinnati, 21 Ohio State 14 (8 Am. Rep. p. 24)

State vs. Hocker, 39 Fla. 477 (63 Am. St. Rep. 174)

Butler vs. Walker, 98 Ala. 358

After a careful analysis of all of the authorities cited, it is difficult to conclude just what is the weight of authority, in view of the decision of Chief Justice Marshall quoted above. If the Government acts merely as one of the corporators of the National Coal Company and exercises no other power in the management of the affairs of the corporation than the one expressly given by the incorporatory Act, it is difficult to understand how the "Voting

Committee" is acting as a public officer. It was not the intention of the Legislature to make the President and Speaker officers of the Government. The Legislature simply intended to add additional duties to said officers. But after all, in our opinion, the fact that the Legislature enacted the law and at the same time provided that, through the President and Speaker, it (the Legislature) should assist in the execution of the same, is sufficient to nullify that provision. It is a matter of no importance in what capacity they acted. The Legislature had no authority to take part in the execution of the particular law.

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT DEPARTMENTS OF GOVERNMENT

It is conceded by all of the eminent authorities upon constitutional law that the courts have authority to finally determine what are the respective powers of the different departments of government.

"The question of the validity of every statute is first determined by the legislative department of the Government, and the courts will resolve every

presumption in favor of its validity. Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Government, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the

courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state."

Case vs. Board of Health, 24 P. R. 250, 251

The judicial department of the Government may examine every law enacted by the legislative branch of the Government when the question is properly presented for the purpose of ascertaining:

(a) Whether or not such law came within the subject-matter upon which the legislative branch of the Government might legislate; and

(b) Whether the provisions of such law were in harmony with the authority given the legislature.

If the judicial branch of the Government finds (a) that the legislative or executive branches of the Government had authority to act upon the particular subject, and (b) that the particular law contained no provisions in excess of the powers of such department and the acts of the executive were within his powers, then that investigation, or that conclusion conclusively terminates the investigation by the judicial department of the Government.

SOLICITUDE OF THE GOVERNMENT OF THE UNITED STATES AND ITS REPRESENTATIVES IN THE PHILIPPINE ISLANDS FOR THE WELFARE AND WELL BEING OF THE INHABITANTS

No Government, past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of the citizens of the Philippine Islands than the Government of the United States and its representatives. Each of the three departments of the Government has had separate and distinct functions to perform in this great labor. The history of the Philippine Islands, covering a period of more than a quarter

of a century, discloses the fact that each department has performed its part well. No one department of the Government can or ever has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres and departments, harmoniously working to maintain good government, peace, and order to the end that the rights of each citizen in his life and property be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field, under the law, within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary and legal limits and assume to act there. No presumption of an abuse of these discretionary powers by one department will be considered, permitted or entertained by another. Such conduct on the part of one department, instead of tending to conserve good government and the rights of the people, would directly tend to destroy the confidence of the people

in the Government and to undermine the very foundations of the Government itself.

CONCLUSION

For all of the foregoing reasons the petition for the extraordinary legal writ of quo warranto should be granted, and that Milton E. Springer, Dalmacio Costas and Anselmo Hilario are each illegally and unlawfully occupying the position of member of the Board of Directors of the National Coal Company and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be immediately inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of the Board of Directors. The demurrer is overruled. Considering the petition and demurrer in relation with the stipulated facts, there seems to be no reason for permitting an answer to be filed. And without any finding as to costs, it is so ordered.

(Sgd.) E. FINLEY JOHNSON.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
SUPREME COURT OF THE PHILIPPINE ISLANDS
IN BANC

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, *Plaintiff,* *vs.* MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, *Defendants.*	"QUO WARRANTO" R. G. No. 26979. Justices Present: Avanceña, C. J. Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

x x

AVANCEÑA, C. J., and JJ. VILLAMOR and VILLAREAL, *dissenting*:—

Much to our regret we have to dissent from the majority whose opinion has always commanded our respect.

In the case of the National Coal Company v. the Collector of Internal Revenue, 46 Phil. Rep., 583, this Court said:

"THE NATIONAL COAL COMPANY, A PRIVATE CORPORATION, SUBJECT TO THE PAYMENT OF INTERNAL REVENUE UNDER THE PROVISIONS OF SECTION 1496 OF THE ADMINISTRATIVE CODE. The National Coal Company is a private corporation. The fact that the Government happens to be a stockholder therein does not make it a public corporation. It is subject to all the provisions of the Corporation Law in so far as they are not inconsistent with Act No. 2705. As a private corporation, it has no greater powers, rights, or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. It was not the intention of the Legislature to give it a preference, or right, or privilege over other legitimate private corporations in the mining of coal. The law made no provision for its occupation and operation of coal-bearing lands, to the exclusion of other persons or corporations, under proper permission. The National Coal Company being a private corporation, neither the lessee nor the owner of the lands upon which it mined coal for the year in question, is subject to the payment of the internal revenue duty provided for in section 1496 of the Administrative Code."

The National Coal Company, having been created and established by the Philippine Legislature for

the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, what relation does it bear with said Government? Is it an agency or instrumentality thereof empowered to perform some government act or function for governmental purposes?

Agency or instrumentality is defined to be a means by which a certain act is done (2 C. J. 420; 32 C. J. 947). So governmental agency or instrumentality may be defined as a means by which a government acts, or by which a certain governmental act or function is performed. A governmental act is a term sometimes used to describe an act done in pursuance of some duty imposed by the state on a person, individual or corporate, which duty is one pertaining to the administration of government and as an absolute obligation on a person who receives no profit or advantage peculiar to himself for its execution (28 C. J. 753, n. 1). Naturally, when a government acts it does so for purposes of its own. Now, what is the purpose of government? "A government does not exist in a personal sense, or as an entity in any primary sense, for the purpose of ac-

quiring, protecting or enjoying property. It exists primarily for the protection of the people in their individual rights, and holds property not primarily for the enjoyment of property accumulations, but as an incident to the purpose for which it exists—that of serving the people and protecting them in their rights." (Curley v. U. S., 130 Fed. 1; 28 C. J. 750.) "The term governmental purposes, as used in the constitution which provides that public property taken for public purposes is exempt from taxation, means, in its most extensive sense, the punishment for crime, for prevention of a wrong, the enforcement of a private right, or in some manner preventing wrong from being inflicted upon the public or an individual, or redressing some grievance, or in some way enforcing a legal right, or redessing or preventing a public individual injury." (Owenboro v. Com. 105 Ky. 344; 28 C. J. 753, n. 8.)

In the light of the above definitions, let us inquire what governmental act or function does the National Coal Company perform, and for what governmental purposes.

As was stated by this Court in the above cited case, "As a private corporation, it has no greater rights, powers, or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. It was not the intention of the legislature to give it a preference, or right, or privilege over other legitimate corporation in the mining of coal. The law made no provision for its occupation of coal-bearing lands to the exclusion of other persons or corporations, under proper permission." It is subject to the payment of internal revenue tax on its coal output. The Philippine Government owns nothing in said corporation except the stock which it has purchased therein. The National Coal Company cannot perform any governmental act, for it has not been authorized to do so. The fact that it has been created and established for the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, and the fact that the Government owns a majority of the stock thereof, are not alone sufficient to give the National Coal Company the distinction of being an agency or instrumentality of said

Government, just as the investment of government money in any other corporation of the same nature or in a radio corporation to which it has given a charter for the purpose of encouraging the development of radio communication in the Islands is not by itself sufficient to make of such a corporation an agency or instrumentality of the Government in the political and administrative sense of the term.

If the National Company is a private corporation, and is not a government agency or instrumentality, what standing has the Government in said corporation by virtue of its ownership of a majority of its stock?

In the case of the Bank of the United States v. The Planters' Bank of Georgia, 6 L. Ed. 244, Chief Justice Marshall said:

> "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to

> the business which is to be transacted. Thus, many states of this Union who have an interest in banks, are not suable even on their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act." (The Bank of the United States vs. The Planters' Bank of Georgia, 22-25, U. S. Rep., 6 L. Ed. 244.)

In the case of the Bank of Kentucky v. Wister et al., 7 L. Ed. 323, the Court, after citing the above paragraph, added:

> "To which it may be added, that if a State did exercise any other power in or over a bank, or impart to it sovereign attributes it would be hardly possible to distinguish the issue of the paper of such banks from a direct issue of bills of credit; which violation of the Constitution, no doubt the State has intended to avoid."

The Government of the Philippine Islands, as a stockholder, has a right to participate in the election of the Directors of the National Coal Company by the exercise of its voting power. In so doing it acts merely as a corporator with no other power than are expressly granted by the Corporation Law, and does not exercise its sovereignty. It cannot impose its sovereign will, but it must act according to the by-laws of the corporation. The only control it has is what is given to it by the amount of its stock.

The Government, as a stockholder, has a right to appoint or designate a proxy to vote its stock in the National Coal Company, and the Philippine Legislature has done this for it by creating in the same Act a voting committee to be composed exclusively of the Governor-General, the President of the Senate and the Speaker of the House of Representatives. Now the question arises whether or not the position of a proxy of the Government in said corporation is a public office.

> "An office is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit

> of the public, by which it is distinguished from employment or contract." (Mechem Pub. Off. quoted in Barnhill v. Thompson, 122 N. C. 493, 495, 29 S. E. 720.)

The word "office" mentioned in the constitution means a position having to do with the general government of the State (Walker v. Cincinnati, 21 Ohio St. 145), and the same meaning must be given to the word "office" mentioned in the Jones Law, which has the character of a constitution.

Does the committee in voting the stock of the Government perform any sovereign function of government?

The Government participates in the management of the affairs of the National Coal Company every time it exercises by proxy the right of voting in the election of its directors, and, according to Chief Justice Marshall, in so doing it acts as a corporator merely and does not exercise any sovereign power. Its proxy, in performing his duty exercises no greater power. And it cannot be otherwise, for we would have the absurd result of an agent exercising a higher power than that of the principal in the fulfilment of the latter's mandate. If the voting of the stock of the Government in the election

of directors of the National Coal Company is the act, not of the Government in its sovereign capacity, but of a corporator merely, the designation of the members of the voting committee by the Government to vote its stock does not involve a delegation of a sovereign function of government, for the function delegated is of a private and not of a public nature.

The case of State v. Stanley, 66 N. C. 59, 8 Am. Rep., 488, cited in the brief for the plaintiff, wherein it was held that membership in a committee, composed of the President of the Senate and the Speaker of the House of Representatives of the State of North Carolina, is an office, is not in point, for said committee was entrusted with the appointment of directors and proxies in all the corporations in which the State was a stockholder; while the committee under consideration has no other power except to vote the stock of the Government in the National Coal Company. In that case the committee was an appointer of directors and proxies; in this case the committee is a mere proxy.

Is the public directly benefited by the exercise of the delegated power of voting the stock of the Government by the committee? When the commit-

tee votes the stock of the Government, as a stockholder, the corporation and its stockholder alone are directly benefited by the act, and the public only indirectly by way of an increased material prosperity. But this is not the kind of benefit that is sought to be obtained by the creation of a public office. It is the benefit that is deserved from the protection of life, liberty, property and the pursuit of happiness.

The voting of the stock of the Government which is delegated to the committee, not being a part of the sovereign functions of the said Government, and not being exercised for the direct benefit of the public, membership therein is not a public office.

Let us now examine into the question whether or not the designation of the President of the Senate and the Speaker of the House of Representatives, as ex-oficio members of said committee, by section 4 of Act 2705, as amended by Act 2822, is constitutional, and therefore valid.

If the membership in the voting committee is not a public office, the designation by the Philippine Legislature of its own members as members ex-oficio thereof is not in violation of the principle

of separation of powers. It will not be denied that the power of appointment to certain offices vested in the Governor-General by the Jones Law refers only to public executive office; that his power of supervision and control is limited to public executive functions, and that the responsibility imposed upon him for the faithful execution of the laws refers only to laws of public nature. Membership in the voting committee, not being a public office the Governor-General has no power to appoint its members; the voting of the stock of the Government not being a public executive function, he has no supervision and control over it; and the law creating the National Coal Company and designating a voting committee not being a public law, he is not charged with the responsibility of executing it. Therefore, in creating the voting committee and designating the President of the Senate and the Speaker of the House of Representatives as ex-oficio members thereof the Philippine Legislature did not encroach upon any of the powers of the Governor-General.

The contention that the Legislature cannot execute its own laws, is contrary to the congressional interpretation expressed on various occasions, spe-

cially in the case of "The Smithsonian Institution". In incorporating it, the Congress has provided for its management "by a Board of Regents" named the Regent of the Smithsonian Institution, to be composed of the Vice-President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of the Congress, two of whom shall be resident of the city of Washington; and the other four shall be inhabitants of same State, but no two of them in the same State" (9 Fed. St. An. Sec. 588 (a)). The members of the Senate were to be appointed by the President thereof; and the members of the House, by the Speaker thereof. Granting, for the sake of argument, that membership in the voting committee is a public office, does the designation of the President of the Senate and of the Speaker of the House of Representatives as ex-oficio members of the said committee an encroachment upon the power of appointment to office vested in the Governor-General?

No challenge seems to have been made to the power of the Philippine Legislature to designate the Governor-General or any other executive officer to serve on said voting committee or any public office,

and a challenge of that nature, if made at all, will find no support in the authorities (12 C. J. 837).

What is vigorously attacked is the power of the legislature to designate any of its members to serve on said voting committee, the contention being that the exercise of such power is a violation of the principle of separation of powers and an encroachment upon the power of appointment to office vested in the Governor-General by the Jones Law.

> "By some authorities the power of appointment to office is regarded as per se an executive function, which, therefore, may not be exercised, vested, or controlled by the legislature except in so far as it is a necessary incident to the exercise of the legislative power or is vested by the constitution in the legislature. By the great weight of authority, however, the power of appointment is held not to be per se an executive function, and unless the appointment of particular officers is, by the constitution, expressly conferred on the executive department or forbidden to the legislature the latter may, by statute, vest the power of appointment in its discretion. The ordinary constitutional distributive clause providing for the complete separation of governmental powers has generally been held insufficient to vest the appointing power sole-

ly in the executive. Thus a statute conferring on a circuit judge the power to fill vacancies in a board of park commissioners is valid. So a board of civil service commissioners may be appointed by the legislature for the purpose of prescribing qualifications for officers except such as are otherwise provided for in the constitution." (12 C. J. 836, par. 319, n. l.)

"A provision of the constitution precluding the legislature from electing or appointing officers does not invalidate an act creating a board of commission of which certain state officers shall be ex-oficio members, nor prevent the legislature from imposing new functions on existing officers." (12 C. J.. 837, par. 319 n. 5.)

"Under the American system of government the chief executive has no prerogative powers, but is confined to the exercise of those powers conferred upon him by the constitution and statute." (12 C. J., 898, par. 402; State v. Bowden, 92, S. C. 393; Richardson v Young, 122, Tenn. 471.)

This must be true of the Governor-General of the Philippine Islands, when section 21 of the Jones Law says in part:

"He shall, unless otherwise herein provided, appoint, by and with the consent of the

> Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint."

The enumeration of the instances in which the Governor-General may make appointments, implies that he has not been empowered to make all appointments. The expression "whom he may hereafter be authorized by the law to appoint," implies clearly that there may be certain cases in which he may not be authorized to make appointments.

It is contended that the legislature may make such appointments where the source of power is the people or the constitution made by the people, as the residuum of power is entrusted in the legislature, but that this may not be done in the Philippine Islands where the source of power is the Congress of the United States, and the Philippine Legislature only acts by delegation of said body. The Congress of the United States, after enumerating the powers pertaining to each of the three departments of the Government and declaring which are the functions of each, has reserved to itself the power and authority to annul the laws enacted by the Philippine Leg-

islature, which must be reported to it (Jones Law, Sec. 19). If the Congress of the United States had intended to limit the powers of the Philippine Legislature to those enumerated by it in the Organic Act and to those of purely legislative character, it would seem that there would have been no necessity for making such reservation; because all laws passed by the Philippine Legislature which are within its powers will of necessity be valid, and all laws in excess of its powers will be null and void, and the courts will so declare them. It is only when a residuum of power is left with a legislature which does not owe its powers to the people or to a constitution made by the people, as the Philippine Legislature, that such reservation becomes necessary; for it may exercise a power which the Congress had not intended it should exercise, and which the latter may be powerless to correct, giving room to doubts with no other means of solving them except by judicial decision, which may be precisely the contrary of what the Congress may have intended. If such reservation of power and authority has any meaning at all, as it must have, it cannot be other than to avoid doubts and uncertainties as to the authority of the legislature to enact certain laws, by permitting those

affected by them to determine by the action or inaction of Congress whether or not such power was one of those constituting the residuum.

Furthermore, nothing could have prevented the Congress of the United States from giving to the Philippine Legislature the power of appointment to an office which have not previously been vested expressly in the Governor-General, as nothing had prevented it from placing in the hands of the Philippine Commission not only executive but legislative powers as well. If so, there is nothing that can prevent it from ratifying any law by which executive offices are created and filled by the legislature with its own members. Ratification may be made either expressly or impliedly. Act 2705, as amended by Act 2822, having been reported to Congress, the failure of the latter to annul it was equivalent to an implied ratification.

In the case of Fajardo Sugar Co. of Porto Rico v. Holcomb, decided on November 23, 1926, the Federal Court of the First Circuit said:

> "If, turning from the section specifically dealing with the powers of the auditor, we look more broadly at the structure of the

Government of Porto Rico provided under the Organic Act,—we are driven to the same conclusion. Under that Act, the Governor-General, Attorney-General, Commissioner of Education and Auditor are presidential appointees. The Governor has, in general, the powers of the Governor of one of our states, and, besides, he is required annually to make official report of the transactions of the government of Porto Rico to the executive department of the United States, to be designated by the President, and the said annual report shall be transmitted to the Congress. Moreover, in section 34 (Comp. St. par. 3803 n), it is provided that if, after veto of the Governor, the Legislature shall by a two-thirds vote pass an Act over the veto, the Governor, if se shall not then approve, shall transmit the proposed Act to the President of the United States; that 'if the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor so stating, and it shall not become a law.' It follows that no Act can become a law without the approval of the Porto Rican Governor, a presidential appointee, or the President of the United States. There is also a provision in section 34 that:

> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States * * * * which hereby reserves the power and authority to annul same.'

If not thus annulled, within reasonable time, there is a presumption that they are approved. Tiaco v. Forbes, 228 U. S. 549, 558, 33 S. Ct. 585, 57 L. Ed. 960; Porto Rico v. American, etc. R. R. 254 F. 369, 165 C. C. A. 589; Camunas v. P. R. Ry. (C. C. A.) 272 F. 924, 931, and cases cited.

The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly,—the output of our federal government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican Government is, in certain aspects, like the relation of a state Constitution to a state Legislature. Camunas v. P. R. Ry., etc., Co. (C. C. A.) 272 F. 924, 928.

But the analogy is not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."

The only prohibition to the appointment of members of the Philippine Legislature to executive public offices is that contained in section 18 of the Jones Law, which says that "No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." The present Speaker of the House of Representatives is clearly not within said prohibition, as Act 2705 creating said committee was enacted in 1917, before his term of office began in 1922; so the now President of the Senate, for while the said Act was passed during his term of office, that term had already expired in 1922, and he is now serving another term (1922-1928).

Therefore, the Philippine Legislature may not only create the voting committee but designate the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of said committee, always granting, for the sake of argument, that membership therein is a public office.

It only remains now for us to dispose of another question, that of the power of the Governor-General to vote the stock of the Government alone, granting again, for the sake of argument, that section 4 of Act 2705, as amended by Act 2822, is unconstitutional in so far as it refers to the designation of the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of the voting committee.

"The provision in the constitution as to distribution of powers, and as to the executive power of the state being vested in the Governor, is declaratory and does not confer specific power" (12 C. J. 898; Field v. Peo, 3 Ill. 79). The power to vote the stock of the Government is delegated to a committee to be composed exclusively of the Governor-General, the President of the Senate and the Speaker of the House of Representatives, and the rule is "Where the power is delegated for a mere private purpose, all the persons (if more than one); upon whom the authority is conferred must unit and concur in the exercise. In case of the delegation of a public authority to three or more persons, the authority conferred may be exercised and performed by a ma-

jority of the whole number. If the act to be done by virtue of such public authority requires the exercise of discretions and judgment,—in other words, if it is a judicial act,—the persons to whom the authority is delegated must meet and confer together, and be present when the act is performed; or at least a majority must meet, confer, and be present after all have been notified to attend. Where the act to be done is merely ministerial, a majority must concur and unite in the performance of the act, but they may act separately." (18 C. J. pag. 472, note 3-a; Perry v. Tynen, 22 Barb (N. Y. 137, 140).

Whether we consider the delegation of the power to vote the stock of the Government as for public or private purpose, the Governor-General alone cannot exercise it as the voting requires the exercise of discretion and judgment, and at least a majority must concur after all have been notified.

To recapitulate, we believe that we have demonstrated the following propositions:

1. That the National Coal Company is not an agency or instrumentality of the Government of the Philippine Islands.

2. That the Government of the Philippine Islands, as mere corporator, if it had to vote its own stock would have to do so in the capacity of a private citizen, and not in its sovereign capacity.

3. That the voting committee in exercising the power delegated to it does so in the same capacity as its principal.

4. That the voting of the stock of the Government is a private act, and the committee in doing so performs a private function, and therefore the membership therein is a private and not a public office.

5. That membership in the voting committee being a private position and not a public office, the designation by the Philippine Legislature of the President of the Senate and the Speaker of the House of Representatives as ex-oficio members thereof was not an encroachment upon the power of supervision and control over all executive functions of the Government vested in the Governor-General.

6. That even granting that membership in said committee is a public office, still the Philippine

Legislature has the power to designate the President of the Senate and the Speaker of the House of Representatives as ex-oficio members of said committee, by virtue of the residuum of power placed in its hands by the Congress of the United States.

7. That whether we consider the delegation of the voting power as for public or private purposes, the Governor-General alone cannot exercise that power as it requires discretion and judgment, and at least a majority must concur.

8. That, finally, the Congress of the United States by its reserved power and authority to annul any law of the Philippine Legislature, has by its silence impliedly ratified Act 2705 as amended by Act 2822.

For the foregoing considerations we are of the opinion that the demurrer should be sustained and the complaint be dismissed.

(Sgd.) RAMON AVANCEÑA.
(Sgd.) IGNACIO VILLAMOR.
(Sgd.) ANTONIO VILLA-REAL.

On the 4th day of April, 1927, the defendants presented the following:

(CAPTION AND TITLE OMITTED)
EXCEPTION AND MOTION

Now come the above-named defendants and except to the decision rendered by this Court on the 1st day of April, 1927, in the above-entitled action, and also except to the final judgment entered therein.

Notice is hereby given that the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court; and said defendants hereby make application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the presentation of said petition to the Supreme Court of the United States.

The grounds, *inter alia*, upon which the defendants intend to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court hereinabove referred to are:

(1) That the decision and judgment of this Court are contrary to the law and the evidence;

(2) That in this action a statute of the United States is involved.

The defendants also pray for a stay of enforcement of the judgment of this Court during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, April 4, 1927.

JOSE ABAD SANTOS
ROSS, LAWRENCE & SELPH
PAREDES, BUENCAMINO & YULO
ARANETA & ZARAGOZA
CHARLES E. TENNEY
CAMUS, DELGADO & RECTO
MARIANO H. DE JOYA

By: (Sgd.) JOSE ABAD SANTOS,
Attorneys for the Defendants,
317-321 Masonic Temple, Manila.

COPY RECEIVED
this 4th day
of April, 1927.

(Sgd.) DELFIN JARANILLA,
Attorney-General, Manila.

On the 4th day of April, 1927, the plaintiff filed the following:

(CAPTION AND TITLE OMITTED)

MEMORANDUM OF PLAINTIFF IN OPPOSITION TO THE DEFENDANTS' FOR STAY OF EXECUTION

Broad considerations of public policy prohibit the granting of a stay of execution in this case. The effect of the decision herein is to hold that the voting of the government-owned stocks in the National Coal Company is exclusively an executive function, and that the Legislature may not absorb to itself or its officers any share of that voting power. Under existing legislation that function is vested in the Governor-General alone. To grant a stay would, in effect, operate to interfere with the Chief Executive of these Islands in the discharge of that executive function.

Furthermore, the administration of, and control over, millions of pesos of Government money, invested in the stocks of Government-owned corporations, are involved in the decision herein. It would be in the last degree impolitic to leave that administration and control in the hands of persons who, as the court has found, are strangers to these corporations and are usurping the powers of direct-

ors thereof. That administration and control involves problems that arise from day to day, the solution of which should not be left, in whole or in part, to men who are without authority to act in behalf of those corporations. The proper administration of this property demands that an immediate end be put to the present uncertainty and chaos.

The authorities hold that, in the absence of express statutory provision otherwise, a judgment of ouster in quo warranto proceedings is self-executing, requiring no process to make it effective, and that the filing of supersedeas bond, will operate, at the most, to stay execution for costs.

Thus in Foster v. Kansas, 112 U. S. 201, 28 L. Ed. 629, 630, the court said:

> "*The judgment operated of itself to remove Foster and leave his office vacant. It needed no execution to carry it into effect.*"

In Faucett v. Superior Court, 15 Wash. 342, 55 Am. St. Reports 894, the court said:

> "The question then is, What is the effect and nature of a judgment of ouster from a public office? It seems to be the settled rule that *such a judgment divests the person oust-*

ed of all official authority whatever, and fully and completely excludes him from the office as long as the judgment remains in force. High on Extraordinary Legal Remedies, 2nd Ed., Sec. 756; Mechem on Public Officers, Sec. 497.

"And a judgment in favor of a relator in a proceeding by information to try title to public office *is, from its very nature, self-executing. By its own force, and without the aid of process or further action of the court, it accomplishes the object sought to be attained.* So far, then, as such a judgment is concerned, there is nothing upon which a stay bond can operate, except an execution for costs, where, as in this case, costs are awarded to the relator. * * * The result of permitting such a judgment to be suspended by an appeal and stay bond would, for obvious reasons, in many instances, in effect, completely destroy the relator's remedy. * * * The following authorities are in point on the questions here involved: People v. Stephenson, 98 Mich. 218; State v. Woodson, 128 Mo. 497; Fylpaa v. Brown County (S. D. April 20, 1895), 62 N. W. Rep. 962; Allen v. Robinson, 17 Minn. 113; Jayne v. Drorbaugh, 63 Iowa 711; State v. Meeker, 19 Neb. 444; Walls v. Palmer, 64 Ind. 493; Elliott on Appellate Procedure, Secs. 392, 393."

In State v. Wilson, 121 N. C. 425, 480, 28 S. E. 554, 565, the Court, in passing upon two motions, one by the defendant to recall a writ of execution issued on a judgment of ouster in quo warranto proceedings, and the other to set aside the supersedeas proceedings, said—

> "We are also of the opinion that the judgment of this court, *ex propio vigore*, placed the relator in possession of the office at the time judgment was filed. He having qualified, no process was necessary for that purpose. * * * The judgment took effect immediately upon being filed, and is not superseded by the subsequent writ of error, regular or irregular. Foster v. Kansas, 112 U. S. 205, 5 Sup. Ct. 8, 97. * * * *"

In People v. Reimberg (1914), 263 Ill. 536, 105 N. E. 715, Ann. Cas. 1915C 343, in a mandamus proceeding to compel recognition of the relators as members of a board of education during the pendency of an appeal in quo warranto proceedings in which they had been successful, the court said—

> "It is further contended that to grant the writ in this case would prejudicially affect the rights of the parties in the quo warranto proceeding pending on appeal in the Appel-

late Court of the First District. The judgment of the Superior Court *is self-executing and requires no process to enforce it. An appeal bond or supersedeas bond will not operate to suspend such a judgment.* Barnes v. Chicago Typographical Union, No. 16, 232 Ill. 402, 83 N. E. 932, 122 Am. St. Rep 129, 14 L. R. A. (N. S.) 1150; 17 Enc. of Pl. & Pr. 489; 20 Enc. of Pl. & Pr. 1244.

See also—

Olmstead v. Distilling Co. 73 Fed. 44,
Fulgham v. Johnson, 40 Ga. 164,
Welch v. Cooks, 7 How. Prac 282.

Indeed, it is held that any attempt to resist such a judgment during the pendency of an appeal constitutes a contempt of the court rendering the judgment. Thus in State v. Wilson, *supra*, the court said—

"The relator being in office by virtue of the judgment of this court, any attempt by the defendant to exercise its functions, or to interfere with the full and free exercise thereof by the relator, and any attempt by any one else to interfere by alleged legal process or otherwise, unless and until the supreme

> court of the United States shall reverse the judgment of this court will be a contempt of this court."

Our opponents may argue that the foregoing cases deal with trials of title to public office, and not to corporate offices, and that different considerations apply to the latter. Our answer is that our statute makes no distinction. "Public civil office" and "office in a corporation" are dealt with as in pari materia, in subparagraph 1 of Sec. 197 of our Code of Civil Procedure. The reason is obvious. The purpose of a judgment of ouster from office in a corporation would, in many instances, be defeated, were a stay granted pending proceedings for the review thereof, just as would the purpose of a judgment of ouster from public office.

Our opponents may appeal to the provisions of Rule 42 of the Rules of this Court in support of their application for a stay of execution. Our answer is that those provisions have no application whatever to judgments which are, in their very nature, self-executing, as is the judgment in this case.

We submit, in view of the foregoing considerations, that the application of the defendants for a stay of execution should be denied.

Manila, P. I., April 4, 1927.

Respectfully submitted,

(Sgd.) DELFIN JARANILLA,
Attorney-General.

(Sgd.) HUGH C. SMITH.

DEWITT, PERKINS & BRADY,
By (Sgd.) C. A. DEWITT,
Special Counsel for Plaintiff.

On the same date, to wit, the 4th day of April, 1927, the Court issued the following order:

"On consideration of the motions of counsel for the defendants in the cases of The Government of the Philippine Islands vs. Milton E. Springer, et al., No. 26979, and of The Government of the Philippine Islands vs. Gregorio Agoncillo, et al., No. 27225, excepting to the decisions rendered by this Court on the first day of April, 1927, and to the final judgments entered therein, and praying for stays of enforcement of the judgments of this Court during the pendency of the application for

writs of certiorari and of the proceedings to be had in the Supreme Court of the United States; of the objections of counsel for the plaintiff in the above-mentioned cases to the granting of the application of the defendants for stays of execution; of the statements made at the hearing; and of the law, the decisions. and all pertinent arguments relating to the issue, the Court ordered that the exceptions be noted and that the prayer for stays be denied. Avanceña, C. J., and Villamor and Villa-Real, JJ., dissented, with regard to the stay of execution."

On the 11th day of April, 1927, the Clerk of the Court entered the following judgment:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 1st day of April, nineteen hundred and twenty-seven;

By virtue thereof it is hereby adjudged and decreed that the demurrer is overruled and the defendants are ousted and excluded from the offices

of directors of National Coal Company, without costs.

(Sgd.) MANUEL M. DE HASAÑAS,
Deputy Clerk, Supreme Court, P. I.
In Charge of Manila Office.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
IN THE SUPREME COURT OF THE
PHILIPPINE ISLANDS

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing .... printed pages contain a true and correct transcript of the record of the case entitled The Government of the Philippine Islands, plaintiff, *vs.* Milton E. Springer, Dalmacio Costas and Anselmo Hilario, defendants, concerning quo warranto, bearing No. 26979 of the docket of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this .... day of ..... A. D., one thousand nine hundred twenty-seven.

V. ALBERT,
Clerk of the Supreme Court of
the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.